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The role of decisions of the boards of appeal of the agencies before the appeal to the Tribunal

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Nina Boer, PhD in European Union Law, Netherlands

Abstract: This work has been based on a complex and difficult area of the procedural law of the Union, that is, the right of appeal from the Tribunal to the Court of Justice of the European Union. The decisions of the boards of appeal, that come from and are established by the agencies, through the relevant jurisprudence, show that the specialization in some matters, through the tribunal, has highlighted a constant, precise work that is carried out by the agencies, which put the judge once again to carry out his work in coherence with the law of the Union. The boards of appeal of the agencies, the continuous specialization in matters, that are not exclusive of the CJEU, have paved the way for a European procedural law, that is in continuous evolution and a judge, who continues to seek the truth according to the rules of the Union as well as to resolve the disputes, that continue to increase in recent years.

Keywords: right of appeal; boards of appeal of the agencies; European procedural law; EASA; ECHA; CPVO; EUIPO; ERA; SRB; ESAs; ACER; applicability of EU law; CJEU; Tribunal.

Introduction

The European procedural system is recognized by the high specialization of judicial knowledge especially in the administrative cases sector, also showing particular peculiarities from the same order of the Union. The regulatory power seems to be perfect in its relationships. Also the criteria contribute to these relationships without doubt to a continuous specialization of judicial knowledge.

This type of specialization constitutes a significant version for the court, which has introduced within the institutional panorama of the Union, a precise competence in specific matters, identified to the type of litigation for private individuals that arise insistently (Arnull, 1999).

The specialized courts evidently show a precise attempt, as a criterion of the jurisdictional architecture of the Union (Capik, 2005; Cameron, 2006; Gervasoni, 2007; Micara, 2007; Bernard-Glanz, Rodriguers, 2008; Fuentetaja, Jesus, 2008; Kraemer, 2009; Hakenberg, 2012; Vandersanden, 2015; Hakenberg, 2017), starting from the Treaty of Nice and following with the continuous reforms during the years.

The specialized courts with continuous reforms and within a systematic reasoning of needs led to a precise and effective level the justice of the administration sector.[1]

The forms of specialization are applicable to the judicial activity of the Union, as internal interventions to the judge of the Union structured in the binomial of the CJEU and Tribunal. A path that has followed an express appreciation for the CJEU, a decisive body for the Union.[2]

Within this context, it is noted the report on the functioning of the tribunal of 21 December 2020 based on Art. 3, par. 1 of the Regulation 2015/2422, which reports on the matter:

"the new specialized sections according to the model of specialization already introduced".

According to this line of thought, the interventions are precise and the decisions of the tribunal are gradual in front of serious areas of litigation,[3] which reach up to a complete category of subdivision of four from the ten sections of the tribunal, that are specialized for cases concerning the public function and

1Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ L 341, 24.12.2015, p. 14–17. Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, PE/1/2019/REV/1. OJ L 111, 25.4.2019, p. 1–3.

2Conclusions of the Council of the European Union of 22 June 2021 on the report of the Court of Justice on the functioning of the General Court of the European Union, where that institution "(…) the General Court has introduced a system whereby civil service cases and intellectual property cases are assigned (…) to a certain number of predetermined chambers (...)".

3Designation of Presidents of Chamber and assignment of Judges to Chambers. OJ C 259, 9.9.2000, p. 14–15.

exclusively the intellectual property sector.[4]

Taking into account the types of litigation, which have as their object the good administrative management, the measures seem to welcome in favor and do not prejudice the general tendency of judges destined to cover an important role in the judicial system of the Union.[5]

Continuous specialization of the European administrative procedural law

Specialized judges, during their mandate, reduce the processing times of cases in quality and technical reliability. In this way, decisions are adopted with efficiency and effectiveness in the administrative sector.

The dynamics of specialization aim to reduce the processing times of cases. As a consequence, the decisions adopted, in a general way, have efficiency and effectiveness in the administration. In other words, the decision-making perspectives adopt and investigate dynamics of specialization of a judicial knowledge, thus highlighting the evaluation of the objectives, that seek to favor, in a rational way, the causes between the members, who make up the same jurisdiction.

4See Decision C2019/372/03 of the Plenary Conference of the General Court of the European Union, of 4 October 2019, Criteria for the allocation of cases to the chambers, in OJEU, C 372 of 4 November 2019.

5See in particular: https://curia.europa.eu/jcms/jcms/p1_4339717/en/ Accessed on 10.09.2025.

In this way, the processing of cases is favored in a rapid way to judicial decisions of high quality, which increase the degree of legitimacy, acceptability of the relationships between decision-making bodies arriving also at a challenge with other instruments of jurisdictional control for decisions, which offer a useful analysis for the times treated.

Specialization and evaluation allow partly shared criticisms also for abuses (Bengoetxea Caballero, 2007; Blèry, 2012; Dreyfuss, 2016; Conway, 2018; Jaeger, 2019), thus constituting a historical path of the facts within the legal system of the Union, which reflects the influence on appeal systems for decisions as well as the expansion of specialized courts, enhancing the capacity the judges, the jurisdictional protection of the sectors of litigation and the appeal judgment. In this way, the modeled pronouncements are based within the relational and in-depth scope of the CJEU with the Tribunal (Chalmers, Davies, Monti, Heyvaert, 2024).

In particular, the continuous specialization in the jurisdictional sector is considered positive within some limits, obviously. A first important limit is that of the Union law, which is not so “forward-looking” in specializations, as highlighted by the judges. This means that the system of jurisdictional activity tries to reduce the risk for the solutions, that the judges offer to prejudice a coherent development of this system.

The Union law, as a frequent evolution of a formulation of sectoral principles and as an extension of its applicability, which distinguishes and at the same time creates generality of the system, creates a certain complication many times if not confusion.

The judges are the recipient of a general mandate, which confer an act to a sector of the dispute. In fact, he is a single judge, who with collateral effect takes away the competence of all the others, who remain extraneous. In this regard, Blèry affirms that:

"(…) spécialiser certaines juridictions, c'est rendre incompétentes les autres (…) le choix d'une forme de spécialisation plutôt qu'une autre-est (…) une volonté politique (…) volonté éminemment variable dans le temps (...)" (Blèry, 2012).

On the other hand, the autonomy of the law of the Union, which respects the national legal systems of the Member States, is based on a continuous elaboration of the principles and categories of an excessive specialization, which complicates the categories in the sector of national law, thus considering and reducing the law of the Union, as a necessary specialization, that is of national inspiration noted in the tax sector.

This approach considers, in a shared way, a specialization, which considers, in a correct and inevitable way, an instrument that is used in a way to provide positive answers, which respect the law of the Union.

Obviously the quality of the answers, which are formed and

which are provided, approach in a necessary way and evaluate the criteria of different nature of jurisdictional and administrative activity.

The procedural structure, is confined to the appeal, for the role of the court, which increases the boundaries after the Treaty of Nice, that is, with the performance of the judgment (Biancarelli, 1990; Öberg, Sabouret, 2018).

The continuous evolution of the court contributes to positioning the primacy of the judge and the provision of justice within the private sector and the interests, which are affected by the administrative activity of the Union. The continuous acquisition of skills by the court acts and has as its final objective the proliferation of specialized bodies suitable for semi-jurisdictional nature to decide.

In this spirit, we note the appeal commissions, which have as their primary objective to fill the gaps but also to offer protection from a non-specialized judge, who ultimately relies on a general jurisdiction. This is an overall vision of a system of the Union and of the application of a transversal nature of the principles, that formulate and create a "jurisprudential grain" (Liakopoulos, 2019).

Furthermore, the decisions of the Tribunal represent the last word, in a restrictive litigation for the CJEU, as a mechanism of appeal with exceptions of legal grounds, as well as the general

possibility of advocacy of the case by the CJEU, after the acceptance of the appeal.

Access to the judge for the appeal is restricted and the Tribunal thus has the nomophilic responsibility of the law of the Union in the areas of litigation, which concerns direct appeals. It is, therefore, essential for the Tribunal the reasonable form of appeal provided for, according to Art. 256, par. 1, letter b) TFEU (Chalmers, Davies, Monti, Heyvaert, 2024).

The Court exercises differently and respectfully to the specialized courts, namely the appeal boards of the relevant agencies, a control operated on its activities. The boards with judicial knowledge and administrative power adapt the ordinary judicial control, which takes place within Art. 263 TFEU, namely of precise and privileged needs.

Boards of appeal and the non-unitary model

The specialized courts envisaged and the boards of appeal of the agencies are devoid of references, within the treaties, which develop a nature of a heterogeneous type. Simplifying reality allows and deals with the board of appeal. Thus, the board of appeal registers, in a different way, the various existing realities, as well as a structure, that constitutes the agency of the Union. Its mandate consists in operating a control on decisions.

The phenomenon of the board of agencies is not a novelty in the

institutional system of the Union, given that the boards of appeal find their point of origin in a ratio of a need for control and a tendency, which increases the prerogatives of the agencies themselves and grants the power, which adopts binding acts towards natural and legal persons, speeding up, in such a way, the administration sector. This consideration is related to the boards of appeal and is oriented to the protection of individuals in front of the relative capacity, that has been given to them.

A first problem, that is noted, has to do with the prism offered, within the category of the "functional continuity" of the court, which through the Procter & Gamble case has framed the appeal boards. A contribution is thus recognized, that carries out the regulatory function of the administration of the Union, through the adopted provisions.

A high level of protection for specific sectors, which the agency considers as responsible are: the intellectual property, chemical substances, plants and, financial supervision. The choice of the model for the specialized courts establishes the boards of appeal, as a structure of agencies, which are capable of the functioning of the administration, which refers to the interests and balanced management of regulatory activity (Harris, 1999).[6]

This architecture opens the problem of conciliation and of the necessary independence of an evaluative nature for the appeal

6Tribunal, 8 July 1999, T-163/98, Procter & Gamble v. OHIM (BABY-DRY), ECLI:EU:T:1999:145.

board as well as the proper placement of the agency, through the work, which controls the administrative and jurisdictional nature of the bodies in question.

The problem, thus, addresses a prism of the category, which is called "functional continuity". A notion that the Court formulates in the Procter & Gamble case,[7] thus framing the relationships existing between the then OHIM (now EUIPO) and the related appeal boards.

These are boards that contribute an architectural basis to the regulatory function of the agency. The court, thus interprets the "functional continuity", as a foundation for the decision-making power of an autonomous nature, which is part of the agency, which reports the contribution and achieves the same objectives with the board of appeal, that is,

"(...) a wide margin of independence in the exercise of their functions, constitute an instance (...) charged with controlling the other instances of the administration to which they belong (…)".[8]

It is an instrumental and functional continuity, which keeps the appeal boards firm, as qualified for the court, which offers the judge of the Union the theoretical and necessary foundation for bodies of a revisionary and incisive capacity, respecting the decisions under its control.[9]

7Tribunal, 8 July 1999, T-163/98, Procter & Gamble v. OHIM (BABY-DRY), op. cit.

8Tribunal, 12 December 2002, T-63/01, Procter & Gamble v. OHIM, ECLI:EU:T:2002:317, par. 21.

9Tribunal, 23 September 2003, T-308/01, Henkel v. OHIM-LHS (UK), ECLI:EU:T:2003:241, parr. 24-36. 3 December 2003, T-16/02, Audi v. OHIM (TDI), ECLI:EU:T:2003:327, parr. 81-83. 10 November 2004, T-164/02, Kaul v. OHIM-Bayer (ARCOL), ECLI:EU:T:2004:328, parr. 27-30. 16 March 2005, T-112/03,

The court is allowed to operate at the board of appeal based on the former Art. 263 TFEU.[10] The category of functional continuity presents itself as an index of an administrative nature for the agency's decision-maker and the appeal board, which necessarily places incompatible independence in an exercise of control functions, which are assigned to it (Adamski, 2014; Alberti, 2022).

Such functions are considered, however, in a different way. The composition of the board, as well as the status of the members indicate a level, which protects independence and does not meet

L'Oréal v. OHIM-Revlon (FLEXI AIR), ECLI:EU:T:2005:102, parr. 32-37. 15 September 2005, T-320/03, Citicorp v. OHIM (LIVE RICHLY), ECLI:EU:T:2005:325, parr. 36-37. 10 July 2006, T-323/03, La Baronia de Turis v. OHIM-Baron Philippe de Rothschild (LA BARONNIE), ECLI:EU:T:2006:197, parr. 56-62. 22 March 2007, T-364/05, Saint-Gobain Pam v. OHIM-Propamsa (PAM PLUVIAL), ECLI:EU:T:2007:96, parr. 32-41. 18 October 2007, T-425/03, AMS v. OHIM-American Medical Systems (AMS Advanced Medical Services), ECLI:EU:T:2007:311, parr. 109-115. 13 September 2010, T- 292/08, Inditex v. OHIM-Marín Díaz de Cerio (OFTEN), ECLI:EU:T:2010:399, parr. 36-39. 28 September 2016, T-476/15, European Food v. EUIPO-Société des produits Nestlé (FITNESS), ECLI:EU:T:2016:568, par. 38 and 57. 7 December 2017, T-61/16, Coca-Cola v. EUIPO-Mitico (Master), ECLI:EU:T:2017:877, parr. 115-116. 11 December 2014, T-102/13, Heli-Flight v. EASA, ECLI:EU:T:2014:1064, parr. 27-28. 21 February 2018, T- 727/16, Repower v. EUIPO-repowermap.org (REPOWER), ECLI:EU:T:2018:88, par. 80. 5 February 2019, T-177/16, Mema v. CPVO, ECLI:EU:T:2019:57, par. 40-42. 18 November 2020, T-735/18, Aquind v. ACER, ECLI:EU:T:2020:542, parr. 32-33. 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638.

10 Tribunal, 11 December 2014, T-102/13, Heli-Flight v. EASA, ECLI:EU:T:2014:1064, parr. 27-28, which is affirmed that: "(...) ratio (of the relevant provisions) - consisting, on the one hand, in allowing the Board of Appeal to accept, where appropriate, an application that has been rejected by the other bodies of EASA and, on the other hand, in the event of confirmation of the rejection by that Board (...) so that the Union judge is in a position to exercise his own review of the legitimacy of the relevant decision (...) the subject of the action for annulment before the General Court is the decision of the Board of Appeal and not the initial decision (…)".

the typical standard of a judge.[11]

The same direction is followed by the financial positioning of the commissions and their agencies, which partially control funds, registries and methods of meeting. Art. 263, par. 5 TFEU lays the foundations for the methods of review of the acts of the agencies. This is a rule of primary law, which regulates the direct jurisdictional mechanism for the action of annulment, through the recognition of the legitimacy of the boards of appeal, as procedural types, that condition access to the judge of the Union.

11As regards the appointment of members who have as their object the decision of the Management Board of the agency and the basis of a list that is first drawn up by the European Commission so and without pretension the boards of appeal of ECHA, EASA or CPVO are based on founding regulations as well as provisions relating to independence and evaluations that instruct external members for the appeal boards. Note for example Articles 89-90 of Regulation (EC) 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, in OJEC, L 396 of 30 December 2006; for the members of EASA note Articles 41-42 of Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, in OJEC, L 79 of 19 March 2008; for members of CPVO see art. 46-47 of Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights, in OJEC, L 227 of 1 September 1994. For members of CPVO and for EUIPO see art. 135-136 of Council Regulation (EC) 207/2009 of 26 February 2009 on the Community trade mark, in OJEC, L 78 of 24 March 2009; for members of ACER see art. 18 of Regulation (EC) 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, in OJEU, L 211 of 14 August 2009. for members of SRB see art. 85 of Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund, in OJEU, L 225 of 30 July 2014. Thus, we can see a regulatory framework based on statutes and on the matter of appointment that extends and revokes the members of the appeal commissions which is an inadequate part that guarantees the impartial level of independence that in a comparative manner requires the bodies holding jurisdictional functions with elements that bring them closer to the functions of a para-jurisdictional nature.

The screening of elements for the procedure of the boards of appeal are applied to disputes, which are the object of the control, that approaches typical procedural standards for the judge. The discussion of the administrative and jurisdictional nature for the boards of appeal is reduced in terms of importance for deriving practices. Thus, in our opinion, the recourse to the commissions is affirmed with a positive outcome, as well as for the heterogeneities that are reduced to their own hybrid nature that does not frame in a precise and organic way the search for a pragmatic solution, which satisfies the protection of private individuals.

This situation makes and leads back to a hybrid nature that can be framed the organic notion towards a search for a satisfactory solution, which improves the protection of private individuals to a regulatory system of an administrative, jurisdictional nature of the Union.

A border-line and non-jurisdictional functions of administrative type necessarily find support in an organism, as bearer of a high technical competence and of a deep knowledge for the national mechanisms of an agency, which remains independently but not extraneous to this logic.

The agency's capacity under investigation combines functions of public and private dimension within the Union context. The commissions, which represent a recognition for the rights in

favor of private individuals actually achieving the objectives of a public type.

The reconstruction of the functions for the judge of the Union has remained fixed for the boards of appeal that are not of a jurisdictional nature. Furthermore, they are not applied to standards that are used to evaluate the judge's work.[12]

The judge is oriented on reflections about the relative involvement of the boards of appeal within the scope of application of a filter for appeals before the CJEU. Reflections in this regard, therefore, deny a dynamic dimension capable of controlling the work of the boards of appeal.

The boards of appeal reflects the architecture of the Union. The boards of appeal has the capacity to provide first-level justice to

12Tribunal, 12 December 2002, T-63/01, Procter & Gamble v. OHIM, op. cit., par. 23. 20 April 2005,T-273/02, Krüger v. OHIM-Calpis (CALPICO), op. cit., par. 62. 8 March 2012, T-298/10, Arrieta D. Gross v. OHIM-International Biocentric Foundation and others (BIODANZA), op. cit., par. 105. 12 December 2014, T-405/13, Comptoir d'Épicure v. OHIM-A-Rosa Akademie (da rosa), op. cit., par. 71. 15 July 2015, T-398/13, TVR Automotive v. OHIM-TVR Italia (TVR ITALIA), op. cit., par. 38. 8 December 2015, T-583/14, Giand v. OHIM-Flamagas (FLAMINAIRE), op. cit., par. 21. 16 February 2017, joined cases T-828/14 and T-829/14, Antrax It v. EUIPO-Vasco Group (Thermosiphons pour radiateurs), op. cit., par. 38. 21 February 2018, T-727/16, Repower v. EUIPO-repowermap.org (REPOWER), op. cit., par. 86. 3 May 2018, joined cases T- 193/17 to T-195/17, CeramTec v. EUIPO-C5 Medical Werks (Forme d'une pièce de prothèse de hanche), ECLI:EU:T:2018:248, par. 58. 17 maggio 2018, T-760/16, Basil v. EUIPO- Artex (Panier spéciaux pour cycles), ECLI:EU:T:2018:277, par. 26. From the previous cases it is noted that the circumstance of a case law orientation developed in an integral manner and with reference to the boards of appeal of EUIPO raises questions regarding the applicability of a orientation and the boards of appeal and the specificities of each of them. It is thus avoided to admit that the unitary vision of the boards of appeal refers to the legal nature that is to be assigned. Quantitative reasoning should be taken into account in the basis of disparity. Thus chambers de recours of EUIPO create a dispute that derives from the boards of appeal and that is statistically probable for adequate decisions in intellectual property matters.

an administrative context. In this way, it balances administrative and individual interests that become structured, effective and consistent with the objectives of the court and with respect to the decisions of the bodies under examination.

The maneuver of judicial control, as a model of protection of individuals with a rapid and efficient way to resolve disputes with a uniform and applicative interpretation of the law of the Union, requires and catalogs the boards of appeal (Liakopoulos, 2019).

Procedural clarifications and contestable acts

The methodological nature of the choices, that develop the treatment in the appeal commissions, through an internal functioning, is connected with mechanisms of jurisdictional control of the decisions adopted. The control of an indispensable and precise body for the same board is a choice that traces to a balance the needs reported.

The comparative analysis of the appeal decisions are existing and operational. They limit in a concurrent way the procedures of bodies that are essential and face in a successive way the control exercised for the court of the Union. The contestable acts before the boards of appeal are able to adopt relationships for the protection offered to private individuals together with the jurisdictional protection by the judge of the Union.

The acts adopted by the respective agencies and the mandate of the boards of appeal regulate a level of review for decisions, that effectively cover administrative activity.

The individual regulations establishing the acts, that can be challenged before the boards of appeal, are not subject to a general identification, according to the model established by Art. 263 TFEU for the action for annulment before the judge of the Union.

The relevant rules offer in a precise and selective way acts that can be challenged to a restrictive approach attentive to a control exercised by the boards of appeal (Bartosch, 2010).

The challengeability and the capacity of the act, that produces binding legal effects towards a private individual, is a principle affirmed by only one board of appeal and in a non-automatic and transferable way to the others, as can be seen in the Stephen Luck v. EASA case,[13] according to which the board of appeal of the agency requests to annul communications that are not recognized with binding effects in a consistent way by the board of appeal that is not competent.[14]

It is useful to divide the boards of appeal into three distinct groups, which also include the boards of appeal of EUIPO and of CPVO to protect intellectual property. The three boards of

13EASA Board of Appeal, decision 30 April 2013, application AP/03/2012, Stephen Luck v. EASA.

14EASA Board of Appeal, decision 30 April 2013, application AP/03/2012, Stephen Luck v. EASA, parr. 42-45.

appeal ECHA, EASA and ERA have administrative capacity. These groups are part of the boards of ACER, SRB and ESAs, which share a coordinated approach with the national authorities, that are competent for their respective areas.

The groupings for the boards of appeal of EUIPO as well as of the CPVO have competence for appeals, that affect the life of an instrument, that protects intellectual property. For example, the competence of the board of EUIPO decisively and through Art. 159, letters a), d) and f)[15] defines the various bodies that make up the office, that is responsible for a given procedure.

More precisely, the registration of a trademark that occupies the examiners, the opposition for registration, cancellation, revocation, assignment of the same, the operations in the register, the closure in the system, and other decision-making activities are assigned to the Executive Director, who according to Art. 66, par. 2 of this regulation does not introduce an appeal to an interlocutory act and does not set procedures listed to a final decision, that indirectly confirms the provision that identifies it. This is an approach that indirectly confirms the provision that follows and that identifies the active legitimate parties to the appeal, thus limiting the scope of application to cases of a procedure that ends with a final decision.

The regime of acts contestable before the CPVO[16] board of

15 Art. 66, par. 1,of the regulation of EUIPO.

16 Art. 67, par. 1, of the regulation CPVO.

appeal is characterized by a substantial complete coverage for the procedures, that this office conducts the granting, rejection, modification, opposition, annulment of a declaration of nullity and of a deprivation of a plant variety. Thus, the provision that prevents a final decision from being challenged against an act that does not put an end to its own proceedings is replicated in an identical manner.

The boards of appeal of ECHA, EASA and ERA, on the other hand, have jurisdiction over any administrative eventuality and the activity of the agency to which they refer assumes private obligations and those towards the administration in the Union context.[17]

For example, the ECHA board of appeal seeks to regulate a market and the boards of appeal of EASA and ERA to regulate the management of safety and the quality of a service. The regulation of air safety is envisaged as a possibility for the subject, who is the recipient of the sanctioning decision towards the protection of individuals.

Art. 84 of the EASA founding regulation provides, that sanctions are not issued by the agency but are directed to the

17 Art. 91 of the ECHA of the regulation, art. 108 of the EASA regulation and Art. 58 of the ERA regulation. For ECHA the attention is based on data and information of the registrant who produces the chemical substance as well as the control that passes to the procedures that formally verify the compliance check and of the evaluation as registration of the same substance. Instead, for EASA and ERA the related contestable acts and decisions for non-release as well as safety certifications for vehicles and control systems for control networks that is also noted in the case of EASA through the corrective measures and the powers of investigation in emergency situations that are related to safety problems.

European Commission. This is a circumstance that excludes the control of a board of appeal, instead, it confirms an accessory positioning to an agency, that is part of a universal competence to a competent sector.

This opens the way to a jurisdictional protection offered by the court, through an annulment action. The board of appeal of ERA is explicit in exercising control over cases in which the agency is not present to act.[18] In such cases it confers on the boards of appeal a competence relating to actions in failure to act, according to the ex Art. 265 TFEU. This prerogative is subject to some procedural limits.[19]

In fact, this is a choice made by the legislator himself towards the varied competences of the appeal boards, which are exercised only through a control inspired by annulment.

Another grouping affects contestable acts against national authorities. The boards of appeal of ACER, SRB and of ESA identify and take into account the privileged relationships of national authorities with member states, agencies that are endowed with coordination powers and with the issuing of

18Art. 58, par. 1, of the regulation of ERA.

19As regards the pre-litigation review procedure that has been provided for in art. 60, the Agency of its decision-making bodies recognize the basis of the appeal with an autonomous manner that seeks to rectify the decision of its non-compliance. The pre-litigation review does not introduce an appeal to the omission that contests and in fact the conditions of admissibility reported and with an identical manner also to a classic appeal for annulment and of the decision that is contested and that considers so similar procedures that also perform a function for litigation and administrative protection by the agency.

opinions, recommendations, guidelines, acts that produce binding legal effects (Alberti, 2014; Alberti, 2018; Mehdi, 2018; Gentile, 2020; Chamon, De Arriba-Sellier, 2022; Marjosola, Rijsbergen, Acholten, 2022; Vasilopoulos, 2022).[20]

For these agencies, the relevant mandate of the commissions is surrounded by elements that outline other agencies, thus allowing the initiation of appeals through binding acts. The relevant rule at ACER[21] refers to decisions, that are adopted according to Art. 2, letter a) and d) of the founding regulation as well as the letters, that provide for the relative adoption of non-binding acts.

The founding regulations of the ESAs are less precise and allow the presentation of appeals against a decision of the authority, according to art. 17, 18 and 19[22] without art. 17 preceding the adoption of soft law acts.

The use of the decision leads in a technical, limiting way to acts that decide for a situation, that affects the legal sphere of a subject. As also in the appeal panel of SRB that enables and

20 See, Art. 2 of the regulation of ACER. Artt. 12, par. 3, 30-31 and 34-36 of the regulation of SRB). Artt. 9, 16 and 23-25 of the regulation of ESAs.

21 See Art. 28, par. 1 of the regulation of ACER.

22 Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), OJEU, L 331, 15 December 2010. Art. 60 of Regulation (EU) 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), OJEU, L 331, 15 December 2010, and Art. 60 of Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), OJEU, L 331, 15 December 2010.

pronounces only the adoption of binding acts.[23]

In this case appropriate measures correct a credit institution to avoid the selection procedure and the adoption of sanctions against them. Instead in the case of SRB the sanctioning measures of a power, which directly belongs to the same committee, as in the case of EASA and of the European Commission, determine the existence of a competence specific to the appeal board, which controls and annuls the decision that has been contested.

What are the effects and nature of the decisions adopted?

From a procedural and logical point of view, the possibility and the introduction of an appeal before the board of appeal can produce a suspensive effect due to a contested decision. However, the discipline is not uniform. The founding acts of agencies such as those of the EUIPO[24] and ECHA[25] are limited to effectively, automatically providing for the act of appeal before a decision of the board of appeal in the form of protection, that becomes a necessary consequence in an inevitable way. Such a solution solution of the legislator of the Union denies the suspension of the effects of the contested acts except for the opportunity granted.

23Art. 85, par. 2 of the regulation of SRB.

24Art. 66, par. 1 of the regulation of EUIPO.

25Art. 91, par. 2 of the regulation of ECHA.

According to what is established by the boards of appeal of EASA,[26] ESAs,[27] SRB,[28] ERA[29] and of ACER[30] as well as by the decision of suspension due to the contested decision, which is up to the executive director of the agency, the hypotheses of the evaluation of such opportunity suspends the board of appeal.

The solutions are not negligible and are the subject of a competence of the same body, that conducts the main procedure that ensures the management, that is consistent with the appeal procedure and the intervention of the direct executive, that inserts the choice of suspension and the considerations of the protection of the appellant and the control of the activity of the agency, that makes the role of the appeal board useless.

The regulation establishing CPVO, thus adopts an approach, that establishes rules for the production of the suspensive effect. This decision is entrusted to the decision-making bodies of the office.[31] The powers of the boards of appeal with respect to the contested act result in the types and decisions that are adopted.

The types of boards of appeal find their competence in the capacity that annuls, confirms agency acts, which operate and are called to control.[32]

26 Art. 108, par. 2 of the regulation of EASA.

27 Art. 60, par. 3 of the regulation of ESAs.

28 Art. 85, par. 6 of the regulation of SRB.

29 Art. 58, par. 2 of the regulation of ERA.

30 Art. 28, par. 3 of the regulation of ACER.

31 Art. 67, par. 2 of the regulation of CPVO.

32 Art. 71 of the regulation of EUIPO; Art. 72 of the regulation of CPVO; Art.

The differences thus accumulated have as a consequence that most of the boards of appeal to refer to the decision-making body, which is competent for the respective agency, to issue a new provision that produces legal effects of a binding nature for the situation of the individual and the national authorities involved.[33]

The boards of appeal of EUIPO, CPVO and ECHA are recipients of the powers that completely replace the annulment. They assume prerogatives for the agency, that is competent for the decision to be issued and exercises and definitively closes the dispute in the matter as well as the related provision before it.[34]

The regime of relations with the decision of the board of appeal refers the matter to the agency, as the decision-making body, that effectively deals with the dispute in the matter. In the cases of EUIPO, CPVO, SRB, ACER, ERA, and ESAs the relevant provisions highlight in an irrelevant way the difference of a textual type formulation.[35]

93, par. 2 of the regulation of ECHA; Art. 113 of the regulation of EASA; Art. 62, par. 1 of the regulation of ERA; Art. 28, par. 5 of the regulation of ACER; Art. 85, par. 8 of the regulation of SRB; Art. 60, par. 5 of the regulations of ESAs.

33 Art. 113 of the regulation of EASA; Art. 62, par. 3 of the regulation of ERA; Art. 28, par. 5 of the regulation of ACER; Art. 85, par. 8 of the regulation of SRB; Art. 60, par. 5 of the regulations of ESAs.

34 Art. 71, par. 1 of the regulation of EUIPO); Art. 72 of the regulation of CPVO); Art. 93, par. 3 of the regulation of ECHA.

35 Art. 72 of the regulation of CPVO: "(…) shall be bound by the decision of the Board of Appeal on points of law provided that the facts are the same (…)". Art. 62, par. 3 of the regulation of ERA: "(…) the final decision shall be in accordance with the findings of the Board of Appeal and shall provide a statement of reasons (…)".

The referral body is bound by the board of appeal[36] apart from the situation of EASA, which is not so outlined. The founding regulation assigns to the decision of the board of appeal a value, that is indicative but not legally binding on the referral body (Simoncini, Verissimo, 2022).[37]

This is a secondary finding, according to which the combined reading is not necessary and binding for the power of substitution, leaving a non-strong and incisive positioning in the EASA board of appeal compared to other boards equipped with tools capable of exercising control over the binding acts for the agency that it adopts towards private individuals.

The case of ECHA does not provide for other discipline that concerns a different analysis. The board of appeal has powers of control and substitution, as a choice that refers to the question of other decision-making bodies that are binding for this board.

The boards of appeal decide on the basis of the appeal, that is, on the necessity, confirmation, annulment of the contested act without specifying the founding regulations. Thus, the

36 Art. 71, par. 2 of the regulation of EUIPO; art. 28, par. 5 of the regulation of ACER; art. 85, par. 8 of the regulation of SRB; art. 60, par. 5 of the regulations of ESAs.

37 Art. 113 of the regulation of EASA: "(…) a new reasoned decision taking into account the decision of the Board of Appeal (…) wording of the EASA Basic Regulation brings about not only a loss in terms of remedial actions available to the BoA, but also in terms of the legal effects of its decisions (...) directs the Agency to take "a new reasoned decision taking into account the decision by the Board of Appeal" (…) arguably means that the BoA decisions no longer bind the Agency, and that EASA could in fact decide differently from the BoA, provided that it gives due reasons, justifying where it deviates from the findings of the BoA (…)".

interpretative way, through the analysis of the case law on the subject, pronounces on the judge of the Union, that refers to the appeal board, which concerns the case in question. The CJEU and the Tribunal establishes for the board of appeal with necessary manner the precise reasoning of an operation of great attention.

The attribution of powers to the board of appeal of EUIPO, allows judges the capacity, the duty of a review in the matter of a contested decision,[38] which is based on arguments and evidence on the administrative stage of the relevant procedure.[39] This position is consistent with the powers of attribution. The boards of appeal are holders of a typology of decisions that call and control the evaluation of the different qualities of a trademark (Greco, 2022). Thus, the similarities of a mandate that is competent for the board of appeal of EUIPO are transferred to the board of appeal of CPVO.

A far as concerned the board of appeal of CPVO, the judge of the Union has not precisely recognized the relative powers,

38 Tribunal, 10 July 2006, T-323/03, La Baronia de Turis v. OHIM-Baron Philippe de Rothschild (LA BARONNIE), op. cit., par. 59. 11 July 2006, T-252/04, Caviar Anzali v. OHIM-Novomarket (Asetra), ECLI:EU:T:2006:199, par. 32. 6 November 2007, T-407/05, SAEME v. OHIM-Racke (REVIAN's), ECLI:EU:T:2007:329, par. 51; 7 December 2017, T-61/16, Coca-Cola v. EUIPO-Mitico (Master), ECLI:EU:T:2017:877, par. 115.

39 Tribunal, 23 September 2003, T-308/01, Henkel v. OHIM-LHS (UK), ECLI:EU:T:2003:241, par. 32; 1st February 2005, T-57/03, SPAG v. OHIM- Dann and Backer (HOOLIGAN), ECLI:EU:T:2005:29, par. 18; 9 November 2005, T-275/03, Focus Magazin Verlag v. OHIM-ECI Telecom (Hi FOCuS), ECLI:EU:T:2005:385, par. 37.

which have to do with the semi-jurisdictional notion.[40] Furthermore, it excludes the possibility for the appeal board to express its opinion on a relevant argument, which the appellant has not presented within the scope of the appeal proceedings, as a means of proof far from the approach of the board of appeal, which is substantially oriented towards a precise examination of the merits of the dispute in progress.[41]

The board of appeal of ECHA as well as the existence of powers that sufficiently complement the case law of the Union justify the extension to the effective control of the board of EUIPO. Chemical substances in the BASF case[42] consider a systematic role to the orientation of the Tribunal under the interpretation of the role of the board of appeal towards the relevant agencies.

The judges of Kirchenberg decided, that the circumstances and the composition of the boards of appeal as technical members do not to limit themselves to a review of legitimacy, which examines the assessment of the factual elements, which found the relevant decision contested. Thus, the procedure before the board of appeal of ECHA delimits the grounds and arguments of the parties. According to the tribunal:

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40 Tribunal, 18 September 2012, joined cases T-133/08, T-134/08, T-177/08 to T-242/09, Schräder v. CPVO-Hansson (LEMON SYMPHONY), ECLI:EU:T:2012:430, par. 137. CJEU, 1 May 2015, C-546/12 P, Schräder v. CPVO, ECLI:EU:C:2015:332, par. 73.

41 CJEU, 1 May 2015, C-546/12 P, Schräder v. CPVO, op. cit., par. 136-140.

42 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638.

"(…) no provision of the regulation (…) explicitly provides (…) the board of appeal. This proceeds to an examination (…) limited to examining whether the arguments put forward by the appellant are such as to demonstrate the existence of an error that invalidates the contested decision (…)".[43]

The judge of the Union entrusts the ECHA board of appeal with a guideline on the review of legality, which strengthens the body that deals with and controls the decision of the agency which is in accordance with the relevant Union law to the decision, which is based on factual[44] and correct technical difficulties (Navin-Jones, 2015).[45]

The relevant case law sees attempts outside the chemical sector. Note the Aquind case[46] where the court ruled on the powers of review and on the commission of the appeal of ACER. Thus, arises the movement that privileges the legislator of the Union in a direct way to an appeal mechanism and an appeal body within the agencies of the Union whenever it grants an important decision-making power.

The judges of the Kirchenberg have held, that the technical

43 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, op. cit.

44 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, op. cit., par. 88: "(…) the legislator [intended] to provide the ECHA Board of Appeal with the expertise necessary to enable it to proceed directly to assessments concerning highly complex scientific factual elements (…) is beyond the scope of any subsequent review that the Union judge may carry out on the decision of the Chambre de Recours (…)".

45 Navin-Jones affirms that: "(...) ECHA Board of Appeal to limit their review or assessment of a particular issue solely to the lawfulness of an ECHA Decision (…) ECHA Board of Appeal may, therefore, in principle annul an ECHA Decision (…) on grounds of the lawfulness of the ECHA Decision but, on other grounds, such as, for example, the scientific basis (…) or the consequences or ramifications an ECHA Decision may have on the Appellant or third parties (…)".

46 Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, ECLI:EU:T:2020:542.

qualification of the members are relevant to the powers, that replace the version of the founding regulation, that recognizes the board of appeal of ACER to:

"(...) verify whether the arguments put forward by the appellant are such as to demonstrate that the considerations underlying said decision of ACER are flawed (…)".[47]

Prior to the temporal terms is the approach that the judge of the Union adopts with regard to EASA and in the judgment of Heli-Flight.[48] Some clarifications are referred to the concern for the lack of control of the board of appeal that exercises its competence in the sector for example of aviation safety. Thus, the court finds that the board introduced complex technical assessments of factual and legal issues without prompting a review of the dispute.

The extensions of the jurisprudence are concentrated on current doubts. In the case of the ACER and EASA the appeal boards have lost the relative powers provided by the reforms of the founding acts.[49]

Two boards of appeal are competent for the annulment of a decision, which challenges the fundamental characteristics for

47 Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit., par. 69.

48 Tribunal, 11 December 2014, T-102/13, Heli-Flight v. EASA, ECLI:EU:T:2014:1064.

49 Art. 19 of Regulation (EC) 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, in OJEU, L 211 of 14 August 2009); Art. 28, par. 5 of Regulation (EU) 2019/942, op. cit., Art. 49 of Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, in OJEU, L 79 of 19 March 2008. Art. 113 of Regulation (EU) 2018/1139, which removed such significant powers from the Board of Appeal, op. cit.

the same court and the orientation relating to the legitimacy review. This criterion is used by the judge of the Union, which considers the technical qualification of the members of the board of appeal, taking into account the subjective nature title for the boards of appeal to a system of the Union able to justify but not to arrive at a configuration of a dispute, that is to remain on checks of error of fact and law, which vitiates the contested decision.

The change in the discipline is not unobserved and the operators of the system in the appeal panel of SRB analyze their role and limit themselves to an error, that manifests the fact and the respect of the boards of ECHA and ACER. The ACER, like the pre-reform and the SRB, is an institutional regulation, which does not entrust the commission of appeal to the CJEU[50] but takes into consideration factual acts.

The board of appeal of ACER loses the incisive powers that operate in a regulatory context that is different.[51]

Judicial appeals: means and relationships

The connection with the protection of the boards of appeal, that directly seek to remedy before the judge of the Luxembourg the cases and their decisions is a subject of appeal before the court.

50CJEU, 9 March 2023, C-46/21 P, ACER v. Aquind, ECLI:EU:C:2023:182.

51CJEU, 9 March 2023, C-46/21 P, ACER v. Aquind, op. cit., par. 8, 55-72 and 71.

This subject privileges the protection of the interests of private individuals and the legal sphere from a decision by the agency, therefore, the remedies are hybrid, semi-jurisdictional of an exclusivity that respects the jurisdictional nature.

The discipline of the founding regulations is found at the boards of appeal of the EUIPO,[52] CPVO[53] and of ECHA.[54] It is of explicit competence that provides for and respects the judges of Luxembourg.

The decisions taken by the agencies and the private individual are addressed to the boards of appeal in cases that challenge the decision that falls within their competence in relation to the founding regulation.[55] This is an eventuality for the appeal and the agency, which directly before the court shows the acts, that in fact surround the board of appeal, that remains in an exclusive relationship between the remedies in question. This approach justifies and considers the powers of substitution for the boards of appeal, that have full capacity and replace the decision-making bodies and the respective agencies, that produce the decision of the binding and desired legal effects to the situation of the private individual.

The board of appeal, thus offers an incisive form of regulation of a dispute on the merits that thus subjects the form, that affects

52 Art. 72, par. 1 of the regulation of EUIPO.

53 Art. 73, par. 1 of the regulation of CPVO.

54 Art. 94, par. 1 of the regulation of ECHA.

55 Art. 74 of the regulation of CPVO. Art. 94, par. 1 of the regulation of ECHA.

the regulation of the dispute on the merits, which places the control to the judge of the Union and within pre-established terms.

The substitute powers of the board of appeal seek to reinvigorate the role of the prejudicial nature of the remedy that respects the judicial appeal and signals as a solution the prejudicial nature that is foreseen in the substitute powers conferred to it, that concludes the link between elements of a structural nature considered and understood in a rigid way. Thus, the boards of appeal of ACER, ERA and EASA[56] make available

"appeals that annul the decisions of the agency that adopt articles 64, 65, 76, par. 6 as well as par. from 77 to 85 of art. 126 that are presented to the CJEU and the possible appeal procedures within their own agency (...)".

It is clear from the articles just cited that the regulations have as their main objective that of maintaining the boards of EUIPO, CPVO and ECHA on a basis of competences that are different and make in a justified way the choice of the legislator of the Union.

The relationship between these elements rigidly considers the boards of appeal that are considered in an application practice, that derives and maintains the autonomy of the remedy to an exclusivity, that respects from the jurisdictional point of view a system of judicial protection of the Union, as a technical-scientific contribution to an appeal, that leads to a model of a

56 Art. 114, par. 1 of the regulation of EASA. Art. 29 of the regulation of ACER. Art. 63, par. 1 of the regulation of ERA. Art. 114, par. 2 of EASA.

predominant nature, which is oriented towards internal remedies and/or direct appeal to the CJEU, a model that adopts for the privileged appellants, i.e. for the institutions, the member states and as an extension towards private individuals.

The boards of appeal of SRB and ESAs present an interpretative situation. The regulations establishing the agencies are drafted and in a similar manner provide for and form every type of prejudicial action as well as the ways that protect the appeal commissions and legitimize them to the judge as a continuation of the intervention of the remedy provided for.[57]

The same provision provides for a general clause that legitimizes the direct proposition of an action before the court with precise acts and decisions of the agencies on the matter.[58]

The indication of the relationship of the provisions certainly prevents the solution, which arrives at conclusions in an equal and convincing way. The results, which are obtained towards a functional interpretation of the rule and a systematic interpretation of an overall system, take into consideration a hybrid formula.

In this case the general clause is applied, which provides for an indiscriminate power of appeal, that is directed to the judge of the Union, as an exception to a rule, that the appeal commission has competence and thus protects the offer, that plays a

57 Art. 86, par. 1 of the regulation of SRB.

58 Art. 86, par. 2 of the regulation of SRB.

prejudicial role. This is how the mandatory nature of the appeal commissions is qualified, which serve in a comprehensive and efficient way the functioning, protection and integration of the Union.

This perspective is opposite and favors an interpretation of a literal nature and in practice a solution, that multiple agencies remain and include the generality of appellants such as private individuals, institutions and member states, that consolidate a relationship and a choice to a remedy in practice.

This is an uncertain situation, that recognizes the same boards of appeal and particularly of the ESAs.[59] Thus, we arrive at a definitive solution, that concerns the positioning of a remedy that offers and respects the jurisdictional appeal to the court.[60] In the SRB and ESAs cases the general clause legitimises the direct appeal to the judge of the Union, that does not justify the legacy prior to the Treaty of Lisbon and necessarily provides for the validity of the jurisdiction of the court on the agencies when they consider and establish after 2009 the relative silence of rules, that in reality are less than they seem.

59 Joint Board of Appeal of the ESAs, decision of 7 January 2016, appeal 2016 001, Kluge and others v. EBA.

60 Joint Board of Appeal of the ESAs, decision of 7 January 2016, appeal 2016 001, Kluge and others v. EBA, parr. 37-38: "(…) is no discussion by the court as to whether and in what circumstances remedies before the Board must be exhausted before a case may be brought before the court, and that question may remain to be decided (…)".

This is a lack of mechanisms, which coordinate the prejudiciality between foreseen remedies while maintaining as an alternative path the protection and the identical powers as those endowed by the boards of SRB, ESAs, that are foreseen with a different way.

The procedural process of appeal against the boards of appeal after the decisions taken before the judge of the Union.

The offer of protection of the boards of appeal of the agencies is destined to lead to judicial review since the responsible judge is that of Luxembourg, who in a different way tries to measure both the Tribunal and the CJEU. The nature of the review depends on indications offered by primary law.

The knowledge of a general principle of the acts of the agencies for the boards of appeal, within the jurisdiction of the CJEU, was the subject of a jurisprudential affirmation, through a path that had a difficult nature (Lauwaars, 1979; Chiti, 2021).[61]

Such an environment shows decisively and unambiguously the innovations brought about by Art. 263 TFEU with the Treaty of Lisbon. In the past, this provision provided clarifications and was explicitly directed to the experience of agencies and the

61 Tribunal, order 8 June 1998, T-148/97, Keeling v. OHIM, ECLI:EU:T:1998:114, parr. 31-32; CJEU, 15 March 2005, C-160/03, Spain v. Eurojust, ECLI:EU:C:2005:168, parr. 37-38. CJEU, 17 July 1959, joined cases 32/58 and 33/58, Snupat v. High Autority, ECLI:EU:C:1959:18; CJEU, 31 March 1965, 23/64, Vandevyvere v. Parliament, ECLI:EU:C:1965:31. Tribunal, 10 December 2002, T-123/00, Thomae v. Commission, ECLI:EU:T:2002:307. Tribunal, order 5 December 2007, T-133/03, Schering-Plough v. Commission and EMEA, ECLI:EU:T:2007:365. 8 October 2008, T-411/06, Sogelma v. AER, ECLI:EU:T:2008:419, parr. 33-35.

boards of appeal. Also the competence of the CJEU was to measure the activity of the agencies of the Union, which have a mandatory impact on their addressees. This activity was established and based on Art. 263 TFEU, letter a), which provides through the judge of Kirchenberg the

> "(…) control of legitimacy on the acts of the bodies or agencies of the Union intended to produce legal effects towards third parties (…). The acts establishing them (…) provide for the specific conditions and procedures relating to appeals brought by natural or legal persons against acts of said bodies or organisms intended to produce legal effects in their regard (…) specific conditions and procedures (…) interpreted as a sort of "investiture" of the appeal boards as bodies (…) responsible for offering a first level of protection to private individuals (…)" (Schwarze, 2012).

The doubts expressed regarding the progressive increase in the number of appeal boards and the tendency to inspire the protection standards are typical of a judge, who induces the evolution of the system and recalls the boards of appeal in a comprehensive manner within a circle of jurisdictional activity, which is operated by the CJEU and the Tribunal trying to fill the void left by the Treaty of Nice, through the closure of an experience of the related specialized tribunals (Dehousse, 2011).

The relevant recognition is included in Art. 263 TFEU and is out of the fact that the adjudication activity of the boards of appeal is oriented towards the spirit of the Luxembourg judge.

In all cases the bodies are activated and pronounce a decision on the dispute in question, that the judge of the Union has not taken into account, i.e. all the relevant procedural step adapted to its own review and the existence of scrutiny from the boards of

appeal.

The acts of examination. Evaluation by the Tribunal

The acts susceptible and examined by the Tribunal operate in the decisions of the boards of appeal for the agencies and dwell on brief considerations to the acts that can be challenged within a scope of review, which the correct identification covers an important secondary importance.

The development and the tendency of a system to an examination provides, that the decisions of the boards of appeal are subject to review by the judge of the Union. The boards of appeal, thus constitute a filter for the acts adopted by the bodies, that are decision-making by the agencies themselves.

The analytical precision problematizes the boards of appeal and the regulatory innovations, that seem to have some uncertainties at an interpretative level.

These are uncertainties, that deserve our attention in the system of remedies, which places the notion of acts, which produce legal effects towards third parties to a review by the judge of the Union. This is a notion that does not call upon primary law but the general logic of a control of legitimacy for the court that is responsible and that acquires the meaning coming from an act, which effectively produces binding legal effects, which in practice are contested (Lenaerts, 1993; Scott, 2011; Senden, Van

Der Brink, 2012).[62]

The existing boards of appeal and the regulatory data are precise and do not offer difficult interpretations. In this regard, we note the regulations establishing EUIPO, CPVO, ECHA, SRB and the ESAs, as well as the related formulas, which are comparable to each other and explicitly provide for the reference act, that has to do with the control operated by the court and the decision of the boards of appeal. In this way:

"(...) the decisions of the boards of appeal (...) may be appealed before the Union judge (...). The competence of the board of appeal substantially coincides with all the activities of the respective office (…).[63] The remaining agencies and the establishing regulation limit themselves to adding the residual hypothesis for which the act of the decision-making body can be challenged, only in cases where a decision of the board of appeal is not available, due to the lack of competence of the latter to rule (…)".[64]

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62 CJEU, 31 March 1971, 22/70, Commission v. Council, ECLI:EU:C:1971:32. CJEU, 11 November 1981, 60/81, IBM v. Commission, ECLI:EU:C:1981:264; CJEU, 9 October 1990, C-366/88, France v. Commission, ECLI:EU:C:1990:348. CJEU, 20 March 1997, C-57/95, France v. Commission, ECLI:EU:C:1997:164; Tribunal, 20 May 2010, T-258/06, Germany v. Commission, ECLI:EU:T:2010:214; Tribunal, 4 March 2015, T-496/11, United Kingdom v. ECB, ECLI:EU:T:2015:133; Tribunal, order of 19 October 2016, T-671/15, E-Control v. ACER, ECLI:EU:T:2016:626. CJEU, 15 July 2021, C- 911/19, FBF, ECLI:EU:C:2021:599. Tribunal, 26 November 2002, joined cases T-74/00, T-76/00, T-83/00, T-84/00, T-85/00, T-132/00, T-137/00 and T- 141/00, Artegodan and others v. Commission, ECLI:EU:T:2002:283 asnd in appeal by CJEU, 24 July 2003, C-39/03 P, Commission v. Artegodan and others, ECLI:EU:C:2003:418. In this case the preparatory acts were not binding and the decisive role formed an act concluding an administrative procedure and producing binding legal effects. Thus the appellant could also introduce an action contesting the final act and also allowing the preparatory act. This case has thus framed and regulated the final act as a binding act. See also: CJEU, 12 July 2005, C-154/04, Alliance for Natural Health and others, ECLI:EU:C:2005:449; Tribunal, order of 1st March 2007, joined cases T-311/06 R I, T- 311/06 R II, T-312/06 R and T-313/06 R, FMC Chemical and Arysta Lifesciences v. EFSA, ECLI:EU:T:2007:67.

63 Art. 72, par. 1 of the regulation of EUIPO and Art. 73, par. 1 of the regulation of CPVO.

64 Art. 94, par. 1 of the regulation of ECHA. Art. 86, par. 1 of the regulation of SRB and art. 61, par. 1 of regulations of ESAs.

The solution, that has been envisaged for the agencies seems to lead to effects, that are consistent with the powers of the boards of appeal, which are their addressees. Without a doubt for EUIPO, CPVO and ECHA, the relevant boards have full substitutive powers with respect to decision-making bodies and are responsible for their own control.[65]

The decision of the board of appeal, thus produces definitive legal effects, which are binding in the sphere of the individual. With regard to the SRB and the ESAs, the boards of appeal adopt decisions, that express a normative provision, that binds the respective agencies.[66]

The cases of ACER, ERA and EASA and difficulties of an interpretative nature

The provisions of the regulations establishing the agencies from 2016 move away from a positive approach since the text of the others explicitly refers to decisions of the boards of appeal. The establishing regulations have identified acts, which are part of the control of the judge of the Union. They call in a direct way the activity of the boards of appeal, that refer in a general way to the agency, which adopts certain provisions and ends up

65 Art. 71, par. 1 of the regulation of EUIPO. Art. 72 of the regulation of CPVO and Art. 93, par. 3 of the regulation of ECHA.

66 Art. 85, par. 8 of the regulation of SRB. Art. 60, par. 5 of the regulations of ESAs.

coinciding within their area of competence.[67]

The regulations of ACER, ERA, EASA provide for the related jurisdictional appeals, which identify and propose the experiment of internal remedies for the agencies referring explicitly to the control of the boards of appeal.[68]

The use of a drafting technique represents a simple and direct approach, which maintains the agencies previously as a precise choice, that does not offer a secure basis to its interpreter. Such an identification is generic and the agency's acts are adopted according to a series of provisions of the founding regulation, which are not limited to the appeal board but move within the competence and the normative reference, which intends to include acts adopted within the circle of decision-making bodies of the agency, which appear as the object of the appeal to the court. The boards of appeal are devoid of substitute powers with respect to a contested act.

Also for EASA the founding regulation is relevant and does not assign the decisions of the appeal board to a binding effectiveness with respect to decision-making bodies, that have entrusted the reform of the contested act. This does not mean that the decisions of the boards of appeal exclude the control of the judge of the Union. Moreover, the normative data offer the

67 Art. 29 of the regulation of ACER. Art. 63 of the regulation of ERA. Art. 114, par. 2 of the regulation of EASA.

68 Art. 28 of the regulation of ACER and art. 58 of the regulation of ERA.

recognition, that precisely identifies the act, that produces legal effects with respect to third parties and is contestable, according to ex Art. 263 TFEU.

The living law requires the judge of the Union to clearly express the court's manifestation with a precise manner to the acts, that can be challenged through an appeal for annulment, which results from the decisions of the appeal board. This is a consequence for the appellants' requests, which directly reject the initial decision of the agency's act with an original manner and in parallel contested before the board of appeal.[69]

The judge of first instance stated in this regard, in par. 24, that:

"(…) ressort de l'article 28, paragraphe 1, et de l'article 29 du règlement 2019/942, lus à la lumière du considérant 34 de ce même règlement, que les personnes physiques et morales qui souhaitent contester une décision de l'ACER (…) peuvent saisir la commission de recours et que, lorsqu'une telle possibilité leur est ouverte, elles ne sont recevables à contester devant le Tribunal que la décision de ladite commission (…)".[70]

This conclusion for the rules governing the activity of the appeal commission to ACER, according to the Tribunal, give an answer to the conditions and precise modalities, which are provided by Art. 263, par. 5 TFEU.

The interpreter takes into consideration acts of a jurisprudential

69 Tribunal, 24 October 2019, T-333/17, Austrian Power Grid and Vorarlberger Übertragungsnetz v. ACER, ECLI:EU:T:2019:760, parr. 29-35; 7 September 2022, T-631/19, BNetzA v. ACER, ECLI:EU:T:2022:509, par. 16-28; 15 February 2023, T-606/20, Austrian Power Grid and others v. ACER, ECLI:EU:T:2023:64, parr. 21-25. CJEU, 7 July 2023, C-281/23 P, Polskie sieci elektroenergetyczne and others v. ACER. ECLI:EU:C:2023: Tribunal, 15 February 2023, T-607/20, Austrian Power Grid and others v. ACER, ECLI:EU:T:2023:65, parr. 21-25.

70 Tribunal, 7 September 2022, T-631/19, BNetzA v. ACER, ECLI:EU:T:2022:509.

nature, which consider the appeal commission to ACER as well as the conclusions of tribunal to be exempt from critical nature observations.

The judge of first instance operates to a logical leap as well as in an excessive way of the appealability of the decision of the appeal commission, which starts from the rule, that is present in the regulation of the ACER and is based on the introduction of the appeal of ex Art. 263 TFEU, as achievement of the exhaustion of the remedies of internal nature of the agency.[71]

The statutes do not equate, in a special way, to the formulation of a desired and chosen nature of the legislator, that is to a remedy, that in a temporary way affirms the subsequent remedy, which does not insist on the final result of a previous remedy. According to the founding regulation of ACER the remedies of a binding nature occur within the time limits. It is understood, that the preferable solution, as a rigorous legal analysis does not seem to ignore the normative data.

The interpretative path of the Tribunal was based on a discipline, that the appeal board of ACER enjoyed full powers of a substitutive nature towards decision-making bodies to an agency, which justifies the appealability of the decisions of the boards of appeal, as acts of a conclusive nature to an administrative procedure of a version, that is in force to a discipline, that does not provide for similar powers.

71 Art. 29 of the regulation of ACER.

The interpretation of the tribunal, in this topic, observes the conclusions of a series of elements, which respect the existence of substitutive powers to the appeal board. The understanding to a system, which shows the application of a jurisprudential orientation of a regulatory review finds a basis in an application different from the previous one,[72] as a possibility extended by the jurisprudence and examined by the appeal boards and the other agencies.

With reference to EASA, reference is made to Regulation 2019/942, which is consistent with the characteristics, which reconstruct and observe the orientation, that the judge of Luxembourg derives from a regulatory datum, which recalls the binding nature of decisions with respect to an administrative one.[73]

The final judgment of legitimacy

The Tribunal is called to examine the decision, which comes from the appeal commission assuming characteristics, that respect the ex Art. 263 TFEU in the sector that refer to the case in question.

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72 Tribunal, 7 September 2022, T-631/19, BNetzA v. ACER, ECLI:EU:T:2022:509; 15 February 2023, T-606/20, Austrian Power Grid and others v. ACER, ECLI:EU:T:2023:64; 15 February 2023, T-607/20, Austrian Power Grid and others v. ACER, ECLI:EU:T:2023:65.

73 Tribunal, 11 December 2014, T-102/13, Heli-Flight v. EASA, ECLI:EU:T:2014:1064, parr. 27-28 and from CJEU, 28 January 2016, C-61/15 P, Heli-Flight v. EASA, ECLI:EU:C:2016:59, parr. 81-82.

The Union moves and starts from the appeal for annulment and the general discipline that remains compliant. The Tribunal, thus deals with a control of legitimacy, that is external to a contested act. In such a case, the defect is manifested in an erroneous interpretation, application of a norm of the Union, which identifies the legitimacy of a final judgment (Lasok, Millet, Howard, 2004; Arnull, 2006; Donnat, 2008; Barents, 2010). Thus, the findings of the facts observed by the Tribunal, that is responsible for the verification and conformity of the act contest the regulation disciplines of a precise identification.

Within this context, it is noted the presence of a decision of the appeal board as a contested act, which modifies the approach of the judge of the Union on a factual dimension.

With regard to the proximity of the boards of appeal in the sector, that regulates the application to the bodies within a jurisprudence of activities and wide discretionary margins of a technical nature, the judge of the Union replaces the control of a relative decision with a discretionary manner (Schwarze, 2009; Turk, 2013; Vos, 2013).[74]

74CJEU, 21 January 1999, C-120/97, Upjohn, ECLI:EU:C:1999:14, par. 34; Tribunal, 3 July 2002, T-179/00, A. Menarini v. Commission, ECLI:EU:T:2002:173, parr. 44-45; 26 November 2002, joined cases T-74/00, T-76/00, T- 83/00, T-84/00, T-85/00, T-132/00, T-137/00 and T-141/00, Artegodan and others v. Commission, op. cit., par. 201; Tribunal, 17 September 2007, T-201/04, Microsoft v. Commission, ECLI:EU:T:2007:289, par. 88. Tribunal, 18 December 2003, T-326/99, Fern Olivieri v. Commission and EMEA, ECLI:EU:T:2003:351; Tribunal, 19 November 2008, T-187/06, Schräder v. CPVO, ECLI:EU:T:2008:511; Tribunal, 7 March 2013, T-94/10, Rütgers Germany and others v. ECHA, ECLI:EU:T:2013:107.

The jurisprudential orientation has had an opening to the Tribunal that ends up carrying out a penetrating administrative evaluation review.[75] It records some openings, that operate on acts of the agencies and decision-making bodies.

The appeal boards, thus carry out an incisive control, in the initial decision, with a substantial manner and on the merits of the dispute offering the judge of the Union a relative secure support, which limits the entrustment of a precise capacity to a particular sector of the boards of appeal.[76]

The judge of the Union tries to remove first of all the correctness from a dispute, the point of legitimacy, the appeal decision, the consideration of a necessity, which specifies the dispute, which allows it to verify the material of the evidence. In this spirit, he also continues to evaluate his own reliability and his own coherence together with the screening of elements, which constitute relevant data, taking into consideration and evaluating a complex situation for the conclusions he has treated and drawn in order to resolve a dispute.

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75 Tribunal, 19 November 2008, T-187/06, Schräder v. CPVO, ECLI:EU:T:2008:511, par. 61; CJEU, 15 February 2005, C-12/03 P, Commission v. Tetra Laval, ECLI:EU:C:2005:87, par. 39; CJEU, 8 December 2011, C-386/10 P, Chalkor v. Commission, ECLI:EU:C:2011:815, parr. 61-67; CJEU, 10 July 2014, C-295/12 P, Telefónica and Telefónica de España v. Commission, ECLI:EU:C:2014:2062, parr. 54-57.

76 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638, par. 88. Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit., par. 53.

Such assessments are difficult since a technical specialization is required and the Tribunal restricts the review and defines the assessment on the verification of facts, that are complex and based on informative criteria based and manifested in the presence of errors in a contested act (Chamon, 2014).[77]

The judge of the Kirchenberg, thus maintains the relative balance control and respects with discretionary and technical manner the appeal boards and the agencies to the jurisdictional review that finds application. The precisions of the review for the judge of the Union are highlighted and concern the appeal boards, thus identifying the fact that the Tribunal and the CJEU are pronounced for their own activities.

The cases concerning intellectual property are related to the founding regulations, which include the grounds based on appeal through the decision of the board of appeal.[78] The appellants must know, that it is a decisive utility through provisions, which respond in an identical manner and provided for by Art. 263, letter b) TFEU. In other words, it is a discipline applied to an appeal different from that of the boards of appeal.

The two founding regulations assign to the Tribunal the power

77CJEU, 15 October 2009, C-425/08, Enviro Tech (Europe), ECLI:EU:C:2009:635, par. 47; CJEU, 21 July 2011, C-15/10, Etimine, ECLI:EU:C:2011:504, par. 60; Tribunal, 16 December 2020, T-176/19, 3V Sigma v. ECHA, ECLI:EU:T:2020:621, par. 39.

78Art. 72, par. 2 of the regulation of EUIPO. Art. 73, par. 2 of the regulation of CPVO.

to annul the decision of the boards of appeal.[79] The prerogative in the area of control from the Tribunal to the CJEU is doubtful, which recalls the power of reform, that is noted in a rigid and precise manner in the Edwin case.[80]

The CJEU at the appeal level specifies and modifies the contested decision, which conditions the Tribunal in the contested act, as an error that leads to annulment (Vesterdorf, 2009; Jaeger, 2016; Clausen, 2018), moving exclusively to the assessments and conclusions of the board of appeal, available to the factual elements necessary for the adoption of a compliant decision.

The shared statements of the CJEU clearly signal the power of reform, that guarantees the Tribunal, in the intellectual property sector, the appeal of legitimacy in the annulment stage, as a procedural process, which lacks autonomy to a functional system, allowing the judge of the Union to give legality to an administrative procedure, referring to the competent agency (Expert, Poullet, 2019).

This does not mean that the Tribunal seeks to exercise a power of reform that is contra legem. The provision of substitution powers for the appeal commissions is understandable and argued, as they seem to place the Tribunal in an institutional

79 Art. 72, par. 3 of the regulation of EUIPO and Art. 73, par. 3 of the regulation of CPVO.

80 CJEU, 5 July 2011, C-263/09 P, Edwin v. OHIM, ECLI:EU:C:2011:452.

position, that makes its choice of attribution understandable, as well as the ability to reform decisions.

It is added that the power of reform mentions the capacity of the boards of appeal of EUIPO and of the CPVO, that replaces the decisions of the respective offices. The decision of the board of appeal seeks to control the dispute and its factual, legal dimensions, which constitute a final position of the office, thus justifying the fact, that the judge of the Union acts directly on the same act to a referral of the decision-making body, which finds in a direct and new way all the elements of the dispute.

These are considerations, that hardly include the reasoning of the same power of reform, which does not guarantee the Tribunal the reference to the board of appeal to the ECHA. It, therefore, enjoys pf substitute powers that are recognized to the boards of appeal in the intellectual property sector.

The intellectual property sector is useful for considerations, that deal with its analysis from the jurisprudence of the Tribunal, that is related to some sectors, that regulate chemical substances as can be seen in the BASF case[81] and in the energy market according to the Aquind case.[82] For the issue of evaluations, which are technical and complex, the judge of the Union provides for the control of decisions of the boards of appeal at a

81 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638.

82 Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit.

limited level.[83]

The Tribunal thus considers, that the appeals for annulment and the judicial control limit and verify the decision of the boards of appeal, which in a flawed manner manifest the abuse of power and the decision, that manifests the limits of discretionary power.[84] Thus, in case of manifest error the control operated by the boards of appeal is differentiated and respected.

The method, which seeks to remove and conclude the judge of the Union to arrive at a conclusion of rules, which regulate the composition and the competences of the boards of appeal and attribute to them a control in the search for the error, allows and restricts the Tribunal to an error manifested, which results in an evident way to the control of a decision, which is contested in the file of the relative dispute.

The identification and assessments of the appeal commissions integrate the case to a manifest error, that remains varied and not precise. The Tribunal is committed to elements, which characterize manifest errors of a subjective nature. As we have seen in the Aquind case the judge has checked the legitimacy of a decision, which grants an exemption to an appellant company, as an assessment of the presence of a risk, which is connected with the investment and the realization of an electric energy

83 Tribunal, 11 December 2014, T-102/13, Heli-Flight v. EASA, ECLI:EU:T:2014:1064, parr. 88-90.

84 Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638, par. 87.

transport system.

In the Esso Raffinage case,[85] the Tribunal provided for a precise examination, during the registration procedure, of a chemical substance according to the REACH regulation,[86] also examining the distribution of powers between member states and the Union agency within the procedure, as a possibility for the ECHA to have specific information submitted to the appellant.[87] Also noteworthy is the 3V Sigma case,[88] in which the Union judges specified the recognition of a manifest error, which states:

"(...) adduced by the applicant must be sufficient to make the factual assessments used in that act (…) they have produced a review of the assessments (…) on the degradation of the substance at the centre of the dispute, generally relying on the factual assessments carried out as a result of a restricted review (…). The "restricted review" does not offer guarantees of effective judicial protection from which they should benefit (…)".[89]

The orientation of the Tribunal has a certain flexibility in the margin of manoeuvre, which regulates the approach according

85 Tribunal, 8 May 2018, T-235/18, Esso Raffinage v. ECHA, ECLI:EU:T:2018:263.

86 Regulation (EC) 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in OJEC, L 396 of 30 December 2006.

87 CJEU, 21 January 2021, causa C-471/18 P, Germania v. Esso Raffinage, ECLI:EU:C:2021:48.

88 Tribunal, 16 December 2020, T-176/19, 3V Sigma v. ECHA, ECLI:EU:T:2020:621.

89 Tribunal, 16 December 2020, T-176/19, 3V Sigma v. ECHA, op. cit., par. 52: "(...) it is apparent from the OECD RG 301B study that UVASORB HEB undergoes only weak degradation after 28 days, the fact remains that, taking account of the observer carbon dioxide values, such degradation of the substance has actually been established. In the present case, it increased to nearly 7% or 8% at the end of the period concerned (...) as is apparent from section 3.2 of that study, entitled "Biodegradeability" (…) nevertheless provide no indication regarding the transformation or degradation products that might be formed; nor do they enable conclusions to be drawn regarding their absence, as the case may be (…)".

to specific cases. It is consistent with the objectives of the former Art. 263 TFEU of the control of legitimacy. The jurisprudence passes and welcomes in favor with precise manner the boards of appeal, that with complex manner operate to the effective generalizations of the judge of the Union, as capacity of adaptation of their activity.

The effectiveness of a system that restricts the centrality of the Tribunal

When we talk about the effectiveness of the outcome of the investigation, we mean conclusions, that affirm the control of the Tribunal by the boards of appeal, which is respected in a systematic and elaborated manner.

The characteristics, that penetrate and respect the evaluations, that are carried out by the boards of appeal recognize the judge of the Union to move within the circle of legitimacy of an act to a judgment, that seeks to resolve the dispute in every sense. These are terms that are important and lead to final conclusions.

The control of the relative decisions, as a species of the genus to an appeal for annulment, highlights the essential boundaries to a remedy, that continues to apply the case in question.

The decision of the boards of appeal constitutes the object of the choices obtained by the Tribunal as well as the decisions relating to the litigation before the CJEU. Thus, the legitimacy

review operates within the judge of the Union and on the decisions of the commissions as questions of a right that arises before them.

The boards of appeal are in accordance with the reasoning of a system, which protects individuals and the order of the Union as an inverted structure. Administrative activity in contact with private individuals, to a progressive rigor, narrows the criteria, that are checked. The examination for the boards of appeal verifies the presence of errors of law and fact.

The Tribunal, as a final objective, has the search for the elimination of manifest errors, explained within the confines of the questions of law and of the boards of appeal examined. The right to appeal before the CJEU is responsible for the error of law and the restrictive canons, which reconstruct the process relating to the appeal. The structure, thus, outlines for the court the decisions of the boards of appeal, as a manifestation of a jurisdictional protection and as an instance, that assumes the qualification of measure.

The boards of appeal seem to be able to overcome the independence and protection of the agencies of jurisdictional and administrative nature. In this way, protection arises, which technically and sufficiently specializes the legal profiles of the application of Union law, in a manner consistent with and within the protection of private interests.

The adjudication for the Tribunal to a role, which manages the evolution of jurisprudential orientations to a sector, that is responsible for the CJEU tries to distance itself. Thus, the control of appeals to the precise techniques and matters in the legal profiles is justified. The judge of first instance tries to conform and interpret the application of Union law.[90] These are statements that are valid and pose the introduction to a process of extension and to a system that tries to filter the disputes within the areas of the boards of appeal allowing and referring to further investigation.

The screening of Art. 58 bis of the Statute as a control mechanism

The specialized judge always has the task of screening technical, complex cases at an instance that evolves the figure of the general administrative judge (Koopmans, 1991; Da Cruz Vilaça, 1991; Lenaerts, 1991; Arnull, 1999; Turner, Muňoz, 1999) at the level that thus exercises jurisdiction over direct appeals for private individuals and the totality proposed by the member states that are responsible for the factual findings of a dispute. Thus, a precise application of the administrative law of the Union, to various sectors, is configured.

The Tribunal has tried to solve the problem of the continuous increase of work of the CJEU. The transition to other

90Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit., par. 29.

mechanisms relating to litigation establishes procedural mechanisms, that reduce the flow of continuous increase of incoming cases, i.e. docket control systems.

The judges of first instance were oriented towards a series of competences, that could be exercised in a different territory, that is to say, specializations ratione loci. A series of judges were different and differ from each other creating, that is to say, a specialization ratione materiae. These are alternatives that allow a predisposition with strong risks to a coordination of decisions for the judges in the same matter and with the increase of appeals before the CJEU within the perspective of orientation, which restores uniformity between territorial offices to the Tribunal structured in this way since 1995 (Arnull, 1995).

The specialization, ratione materiae, of the judge of the Union is linked to a double thread of autonomy in the normative sector. It considers the technical autonomy, in the matter, as a result of a possible isolation to a dedicated judge, who limits the appeals before the CJEU, thus trying to reduce the intervention that seeks to resolve disputes between conflicting jurisprudential orientations.

The considerations of the tribunal also concern the matter of the civil service (Vandersanden, 2015; Hakenberg, 2017), as a precise and relevant reasoning to the degree of autonomy, that also respects other sectors of the law of the Union. This

approach according to the model of the specialized judge in front of a dispute of the civil service reaches an important framework in the sector (Mahoney, 2011) and does not have the possibility of arising to a complex strategy, that disciplines a judicial architecture of the Union, as a meeting for the sectors of autonomy, which respects the general categories of the law of the Union in a limited way.

The lack of a model of specialization, ratione materiae, increases the work of the appeal commissions, as bodies of adjudication protection of disputes in the agencies of the Union. It seems to be a complex technique, that advances other proposals, that deserve and consider task forces of legal secretaries within the Tribunal, as sectoral and specialized attributions of high level (Alemanno, 2017; Coutron, 2018).

The idea of the referendaries, as assistants of service at the Tribunal, is an interesting point for the effectiveness of the solutions and greater ease from an administrative point of view. The reference to the work, as approval of the reform, had as a consequence of doubling the number of judges, as well as the possibility of a corpus of assistants for the presidents of the sections qualifying them to the cabinet of the president of the same Tribunal.

The various specializations are mechanisms filtering the cases, that are introduced before the judge of the Union. This

possibility does not take into account the control mechanisms relating to the admissibility of preliminary references and especially a system of cooperation between judgments built by Art. 267 TFEU (Lacchi, 2020).

With the reform of 2024, the preliminary jurisdiction remains and is based on a guarantee in favor of the judge of the Tribunal on some matters, as a filter mechanism and selection of important cases (Lenaerts, 2006; Naômè, 2010; Wahl, Prete, 2017; Broberg, Fenger, 2021). The idea of a control system characterizes the presence of a broad jurisdictional panorama of the Union, that needs a substantial regulatory reform, thus building a precise realization of a "stronger" Tribunal on some matters and a CJEU, that examines the disputes at primary level before they are decided.

An application practice before the CJEU

The admission mechanism, according to the former Art. 58 bis of the Statute, does not depart from its operational functioning of a survey, that is at the heart of a mechanism, that interprets the admissibility criteria for the CJEU, i.e. a limit to high numerical data[91] of a partial type.[92] The matter of intellectual

91CJEU, order 10 December 2021, C-382/21 P, The KaiKai Company Jaeger Wichmann GbR, ECLI:EU:C:2021:1050; CJEU, order of 7 April 2022, causa C-801/21 P, EUIPO v. Indo European Foods, ECLI:EU:C:2022:295; CJEU, order of 18 April 2023, C-751/22 P, Shopify v. EUIPO, ECLI:EU:C:2023:328.

92CJEU, order of 8 May 2023, C-776/22 P, Studio Legale Ughi and Nunziante v. EUIPO, ECLI:EU:C:2023:441.

property is included in the decisions of the boards of appeal of the EUIPO and of the CPVO.[93]

Considerations about the quantitative system, in the matter of intellectual property, show in a comprehensive way, the sectors of a board of appeal that clearly approaching the CJEU, as an operational use of a filter mechanism for appeals of a stringent, effective nature that reduces the work of the disputes.

The EUIPO cases have constituted a public list based on the mechanism of the ex art. 58 bis. In this way, a reasoning of the control of appeals is built.

A similar work is noted in the purposes of a system of individual protection relating to the subjects of the appeal, that is, a filter that affects an approach that keeps the judge of the Union to have an operational content.

This formula is broad and generic based on Art. 58bis. It introduces the admissibility criteria, that do not define the logic for appeals, which are inadmissible under the conditions, that are foreseen and have led the CJEU not to define in a positive way concepts of unity, coherence of the law of the Union as well as the lack of existence of arguments, that arise from the parties up to the relative admissibility of appeals.

It is not satisfied the admission of an appeal, that is based exclusively on the attempt to obtain a factual finding for the

93CJEU, order of 16 September 2019, C-444/19 P, Kiku v. CPVO, ECLI:EU:C:2019:746; CJEU, order of 3 March 2020, C-886/19 P, Pink Lady America v. CPVO, ECLI:EU:C:2020:146.

CJEU[94] and an interpretation by the Tribunal of the conceptual categories, that are part of the administrative procedures, which regulate for example a trademark. These conceptual categories contain notions such as of "distinguishability",[95] of "secondary and auxiliary characteristics",[96] of "public disputes",[97] "serious use",[98] "bad faith",[99] "individual nature",[100] "new"[101]and "priority"[102]. These are objects for the CJEU, which need an interpretation for the judge of first instance demonstrating in an inconsistent and important way the coherence, development of the law of the Union.

94CJEU, order of 24 September 2019, C-426/19 P, Hesse v. EUIPO, ECLI:EU:C:2019:778; CJEU, order of 12 March 2020, C-893/19 P, Roxtec v. EUIPO, ECLI:EU:C:2020:209; CJEU, order of 31 March 2022, C-761/21 P, St. Hippolyt Holding v. EUIPO, ECLI:EU:C:2022:249; CJEU, order of 31 March 2022, C-762/21 P, St. Hippolyt Holding v. EUIPO, ECLI:EU:C:2022:255.

95CJEU, order of 10 September 2019, C-375/19 P, Wirecard Technologies v. EUIPO, ECLI:EU:C:2019:714; CJEU, order of 1st October 2019, C-460/19 P, Stada Arzneimittel v. EUIPO, ECLI:EU:C:2019:803.

96CJEU, order of 22 February 2022, C-679/21 P, Sony Interactive Entertainment Europe v. EUIPO, ECLI:EU:C:2022:109.

97CJEU, order of 24 February 2022, C-678/21 P, Sony Interactive Entertainment Europe v. EUIPO, ECLI:EU:C:2022:141; CJEU, order of 22 September 2022, C-338/22 P, Hrebenyuk v. EUIPO, ECLI:EU:C:2022:732.

98CJEU, order of 24 September 2019, C-426/19 P, Hesse v. EUIPO, ECLI:EU:C:2019:778.

99CJEU, order of 22 October 2019, C-582/19 P, Holzer y Cia v. EUIPO, ECLI:EU:C:2019:891; CJEU, order of 12 December 2019, C-713/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1080.

100CJEU, order of 24 October 2019, C-613/19 P, Porsche v. EUIPO, ECLI:EU:C:2019:905.

101CJEU, order of 16 September 2019, C-444/19 P, Kiku v. CPVO, ECLI:EU:C:2019:746; CJEU, order of 3 March 2020, C-886/19 P, Pink Lady America v. CPVO, ECLI:EU:C:2020:146.

102CJEU, order of 28 September 2022, C-320/22 P, The Airscreen company v. EUIPO, ECLI:EU:C:2022:731.

The judges of the Union, thus take into consideration the dimension of questions, which exhaust the object of the appeal in each single case, which does not denote a general relevance for their own legal system.[103]

It is the same jurisprudence of the Union, that represents an element, that justifies the relevance of its appeal as a reality, which in the face of divergent orientations,[104] presents itself as a new question.[105]

In this way, the CJEU has had the opportunity to express itself by considering factors, that affect in a unitary manner, the

103CJEU, order of 6 May 2022, C-65/22 P, Inditex v. EUIPO, ECLI:EU:C:2022:369, parr. 15-18: "(…) la partie requérante au pourvoi doit démontrer que, indépendamment des questions de droit qu'elle invoque dans son pourvoi, ce dernier soulève une ou plusieurs questions importantes pour l'unité, la cohérence ou le développement du droit de l'Union, la portée de ce critère dépassant le cadre de l'arrêt sous pourvoi et, en définitive, celui de son pourvoi […]. Cette démonstration implique elle-même d'établir tant l'existence que l'importance de telles questions, au moyen d'éléments concrets et propres au cas d'espèce, et non pas simplement des arguments d'ordre général (…)". CJEU, order of 16 September 2019, C-421/19 P, Primed Halberstadt Medizintechnik v. Prim, ECLI:EU:C:2019:745, parr. 13-14; CJEU, order of 22 February 2022, C-674/21 P, Residencial Palladium v. EUIPO, ECLI:EU:C:2022:170, par. 15; CJEU, order of 23 March 2022, C-730/21 P, Collibra v. EUIPO, ECLI:EU:C:2022:208, par. 17 and 19; CJEU, order of 11 July 2022, C-187/22 P, Laboratorios Ern v. EUIPO, ECLI:EU:C:2022:547, parr. 15-16; CJEU, order of 7 June 2022, C-194/22 P, Magic Box Int. Toys v. EUIPO, ECLI:EU:C:2022:463, par. 18.

104CJEU, order of 6 February 2020, C-858/19 P, NHS v. EUIPO, ECLI:EU:C:2020:83; CJEU, order of 13 February 2020, C-867/19 P, Conféderation Nationale du Crédit Mutuel v. Crédit Mutuel Arkéa, ECLI:EU:C:2020:103; CJEU, order of 17 January 2022, C-599/21 P, AM.VI. and Quinam v. EUIPO, ECLI:EU:C:2022:32; CJEU, order of 5 April 2022, C-784/21 P, Kappes v. Sedus Stoll and EUIPO, ECLI:EU:C:2022:292.

105CJEU, order of 24 October 2019, C-599/19 P, Rietze v. EUIPO, ECLI:EU:C:2019:903; CJEU, order of 19 November 2019, C-660/19 P, Nonnemacher v. EUIPO, ECLI:EU:C:2019:996; CJEU, order of 6 April 2022, causa C-19/22 P, Sanford v. EUIPO, ECLI:EU:C:2022:262; CJEU, order of 15 June 2022, C-120/22 P, Cyprus v. EUIPO, ECLI:EU:C:2022:493.

coherence and development of the law of the Union.

The appellant's hypotheses are worth, as a procedural violation. The failure to admit evidence[106] relating to the violation of the right to be heard at a hearing[107] and the erroneous decision to introduce new arguments in the judgment before the Tribunal[108] are rights, violated from a procedural point of view, finding their basis and guarantee in Articles 41 and 47 CFREU.[109]

Within a horizontal level the CJEU seems to have created an overlapping control according to the basis of Art. 58bis of the Statute. The admissibility test of the appeal is based on the capacity, that indicates first of all the errors of law. Furthermore, it contests the reasons to the Tribunal, which legitimise the relative appeal at the moment, that this is admitted.[110]

The CJEU with the admissibility test includes the points of

106CJEU, order of 7 October 2019, C-589/19 P, L'Oréal v. EUIPO, ECLI:EU:C:2019:842; CJEU, order of 7 October 2019, C-590/19 P, L'Oréal v. EUIPO, ECLI:EU:C:2019:841; CJEU, order of 19 December 2019, C-696/19 P, Hauzenberger v. EUIPO, ECLI:EU:C:2019:1116.

107CJEU, order of 23 April 2020, C-936/19 P, Rubik's Brand v. EUIPO, ECLI:EU:C:2020:286; CJEU, order of 22 June 2022, causa C-152/22 P, Legero Schuhfabrik v. EUIPO, ECLI:EU:C:2022:500; CJEU, order of 22 June 2022, C-153/22 P, Legero Schuhfabrik v. EUIPO, ECLI:EU:C:2022:524; CJEU, order of 22 June 2022, C-154/22 P, Legero Schuhfabrik v. EUIPO, ECLI:EU:C:2022:501.

108CJEU, order of 12 December 2019, C-714/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1085; CJEU, order of 12 December 2019, C-715/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1086.

109CJEU, order of 13 February 2020, C-823/19 P, Ruwido Austria v. EUIPO, ECLI:EU:C:2020:100; CJEU, 3 March 2020, C-902/19 P, Esim Chemicals v. EUIPO, ECLI:EU:C:2020:145; CJEU, order of 15 July 2022, C-233/22 P, Meta Cluster v. EUIPO, ECLI:EU:C:2022:593.

110See Art. 170 bis, par. 2 of the statute of the CJEU.

screening, that it exercises.[111] This choice does not prevent the practice, that respects the subdivision, which is oriented, in the rejection of the appellant's request, as a limit of the same reasons based on the appeal.[112] In this way, decisions have arisen, that are oriented to a partial confusion between the profiles called.[113]

The decisions of the CJEU risk exposing a criticism of the approach regarding the categories of inadmissibility within the scope of preventive admission.

Art. 170 bis of the Regulation of the procedure of the CJEU requires further formalities for the form of the application for admission and the elements that are useful to allow the CJEU to create such an application and identify the satisfaction of the

111 CJEU, order of 19 April 2023, causa C-42/23 P, Mendes v. EUIPO, ECLI:EU:C:2023:325, par. 13: "(...) demande d'admission du pourvoi doit (...) énoncer de façon claire et précise les moyens sur lesquels le pourvoi est fondé, identifier avec la même précision et la même clarté la question de droit soulevée par chaque moyen, préciser si cette question est importante pour l'unité, la cohérence ou le développement du droit de l'Union et exposer de manière spécifique les raisons pour lesquelles ladite question est importante au regard du critère invoqué (…) demande d'admission du pourvoi doit préciser la disposition du droit de l'Union ou la jurisprudence qui aurait été méconnue par l'arrêt ou l'ordonnance sous pourvoi, exposer de manière succincte en quoi consiste l'erreur de droit prétendument commise par le Tribunal et indiquer dans quelle mesure cette erreur a exercé une influence sur le résultat de l'arrêt ou de l'ordonnance sous pourvoi (…)".

112 CJEU, order of 10 July 2019, C-359/19 P, Meblo Trade v. EUIPO, ECLI:EU:C:2019:591, par. 7; CJEU, order of 12 December 2019, C-713/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1080, par. 12; CJEU, order of 12 December 2019, C-714/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1085, par. 12; CJEU, order of 12 December 2019, C-715/19 P, Guiral Broto v. EUIPO, ECLI:EU:C:2019:1086, par. 12; CJEU, order of 4 February 2022, C-672/21 P, Eos Products v. EUIPO, ECLI:EU:C:2022:81, par. 16-17.

113 CJEU, order of 7 October 2019, C-586/19 P, L'Oréal v. EUIPO, ECLI:EU:C:2019:845. CJEU, order of 20 November 2019, C-678/19 P, Retail Royalty v. Fashion Energy, ECLI:EU:C:2019:994, parr. 18-19 and 21-22. CJEU, order of 18 March 2020, C-908/19 P, European Food v. EUIPO, ECLI:EU:C:2020:212, parr. 17-18.

section, which carries out the admissibility screening provided for by Art. 58bis, letter c) of the Statute.

The CJEU rejected the application for admission since it reserves only the hypotheses of a failure to file to the application with the Regulation of the procedure, that is not followed by a regularization.[114]

The inadmissibility of an appeal and the possibility of a negative application operates from a procedural point of view. Inadmissibility is limited to cases where the CJEU does not deal with an important issue, the development and coherence of the Union by reserving to a treatment relating to the inadmissibility and rejection of an application, with an explicit manner and a failure and imprecise identification on profiles, which the CJEU exercises its control, according to the prerequisites of Art. 170 bis of the procedural regulation.[115]

The few appeals so far were able to filter and put the CJEU to accept as admissible only those, which have all the conditions both substantial and formal, satisfy the minimum and require an

114CJEU, order of 12 July 2019, C-412/19 P, Pan v. EUIPO, ECLI:EU:C:2019:616; CJEU, order of 5 September 2019, C-499/19 P, Lupu v. EUIPO, ECLI:EU:C:2019:683; CJEU, order of 11 February 2022, C-610/21 P, Svenska Metallkompaniet v. EUIPO, ECLI:EU:C:2022:107; CJEU, order of 11 February 2022, C-611/21 P, Bese v. EUIPO, ECLI:EU:C:2022:108; CJEU, order of 12 May 2022, C-300/22 P, Govern d'Andorra v. EUIPO, ECLI:EU:C:20222:443.

115CJEU, order of 10 October 2019, C-577/19 P, KID-Systeme v. EUIPO, ECLI:EU:C:2019:854, parr. 15-18; CJEU, order of 5 November 2019, C-622/19 P, Luz Saúde v. EUIPO, ECLI:EU:C:2019:925, parr. 14-15; CJEU, order of 5 December 2019, C-664/19 P, Agencja Wydawnicza Technopol v. EUIPO, ECLI:EU:C:2019:1048, parr. 17-19 and 21; CJEU, order of 6 July 2022, C- 253/22 P, Calrose Rice v. EUIPO, ECLI:EU:C:2022:546, parr. 15-17.

effort for the parties, thus integrating the burden of proof, according to the requirements established by Art. 58bis of the Statute. These have passed to a control at the appeal level.

The dispute, in this regard, has varied and exceptional consequences according to the order of the Union, the institutional features and the general capacity, which produces certain effects of a legal nature.

The appeals are accepted and based on principles relating to the independence of a legal representative[116] and especially on issues relating to inter-judicial relations relating to Union law and to rules that are not internal but are of a partial nature.[117]

The possible lines of decisions show perplexity with respect to the choices of the CJEU. In the All Star v. EUIPO case[118] the judges highlighted the existence of divergences between Member States and the notion of notorious facts based on the integration and the admissibility criteria of the mechanism in this regard. It was stated:

"(…) est vrai que des divergences entre les juridictions des États membres

116CJEU, order of 8 May 2023, C-776/22 P, Studio Legale Ughi and Nunziante v. EUIPO, op. cit., par. 29: "(…) relever qu'une telle question n'est pas liée à un domaine spécifique du droit de l'Union, mais concerne tout type de contentieux porté devant le Tribunal pour lequel est exigée la représentation par un avocat, au sens de l'article 19, troisième alinéa, du statut de la Cour de justice de l'Union européenne (…)".

117CJEU, order of 10 December 2021, C-382/21 P, The KaiKai Company Jaeger Wichmann GbR, ECLI:EU:C:2021:1050, parr. 24-34. CJEU, order of 7 April 2022, C-801/21 P, EUIPO v. Indo European Foods, ECLI:EU:C:2022:295, parr. 30-41; CJEU, order of 18 April 2023, C-751/22 P, Shopify v. EUIPO, ECLI:EU:C:2023:328, parr. 27-40.

118CJEU, order of 30 September 2019, C-461/19 P, All Star v. EUIPO, ECLI:EU:C:2019:797.

seraient susceptibles de compromettre l'unité de l'ordre juridique (...) pas moins que la procédure du renvoi préjudiciel (...) précisément pour but de garantir l'unité d'interprétation du droit de l'Union et de permettre ainsi d'assurer sa cohérence (…)".

This is an approach consistent with the fundamental objectives of a preliminary reference instrument, which undermines the relative autonomy of the preventive admission mechanism with appeals. Art. 267 TFEU is a procedural instrument that allows a direct exposition of reasoning, therefore, it does not require the introduction of proceedings before a national jurisdiction, which obtains a ruling by the judge of the Union.

The orientation in the face of divergent applications of the Member States justifies the relative inadmissibility of an appeal, according to the existence of a preliminary reference, as an alternative remedy, which does not seem to meet the objectives of Art. 58bis of the Statute. Thus, appeals have passed the relative filter and the bars of inadmissibility.

Admissibility is recognized according to the order of the Union, which is engraved in the institutional features and in the relationships with norms, that are foreign and it is difficult to arrive at a coordinated collaboration with the CJEU. The differences between Member States in interpreting and applying Union law are a result of these types of requirements.

The appeals are accepted for a hearing. The CJEU decides on the procedures followed and reaches conclusions with the help

of the advocate general.[119] The conclusions are oriented towards a solution that the judges prefer. This case reflects the overcoming of the role of the advocate general.

The conditions and positions of the advocate general are in line to the mechanism of preventive admission. The hypothesis of a case, that considers as admissible a hearing, that respects the same cause, receives the conclusions of the advocate general. This happens when there are new and never heard cases from the CJEU. The related ad hoc section excludes the novelty of a question of law, that justifies this type of filter, as an inverse relationship. The novelty of this conclusion of law considers as a not necessary and sufficient condition the foundation of the admissibility to an appeal.

The future of an admission for appeals is sensitive and the coordination with the CJEU, that is between two procedural mechanisms, is configured as a situation of the conclusions of the advocate general that calls and focuses on new points that have put the CJEU to consider the appeal admissible.

After the reform of 2022

The preventive admission procedure, in a deliberate manner, concerns the regulatory structure to an operational context for a functioning, that the legal system of the Union knows very well.

119CJEI, Conclusions of the Advocate General Ćapeta of 13 July 2023 in case: C-382/21 P, The KaiKai Company Jaeger Wichmann GbR, ECLI:EU:C:2023:576.

The jurisdictional architecture of the Union and the relationships between CJEU and Tribunal broaden the relative field of investigation with a view to evolution and integration. The preventive admission mechanism for appeals returns as an object of attention for the CJEU and the legislator of the Union.

Since November 2022, the CJEU has started the procedure for the proposal of the Statute based on Art. 281, letter b) TFEU. In this way, there is an intervention into the jurisdictional instances of the CJEU.[120]

The reform concerns the transfer to the court of preliminary jurisdiction, some technical matters. At the same time, there is a need to expand the filter mechanism, according to the former Art. 58bis of the Statute. The reform of Art. 58bis is based on the coherence of the CJEU as well as on greater integration of it.

The application of the instrument generally enjoys the boards of appeal, which were already present in 2019, with regard to other agencies of the Union, which used unverified filters.

The proposal for the reform of the CJEU provides for the

120 Council of the European Union, Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, 12 December 2022, n. 15936/22: https://data.consilium.europa.eu/doc/document/ST-15936-2022-COR-1/en/pdf Accessed on 10.09.2025. European Parliament legislative resolution of 27 February 2024 on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (07307/2022 – C9-0405/2022 – 2022/0906(COD)). Amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=EP:P9_TA(2024)0086 Accessed on 10.09.2025. The European Parliament, the Council: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Protocol No 3 on the Statute of the Court of Justice of the European Union of 6 March 2024, PE-CONS 85/23. 2022/0906 (COD).

application of the mechanism of a preventive admission for appeals, through decisions, that are adopted by the court in the arbitration clauses.

It is the same Art. 272 TFEU, which allows the judge of the Union to be competent and to judge a clause relating to a public and private law contract, which has been concluded by the Union, thus establishing the jurisdiction of the court as well as of the Tribunal. This mechanism has a contractual nature for the judge and appears as a typical clause.

The proposal was considered and accepted after many doubts especially for the appeal boards and the direction for the CJEU, which indicated a systematic coherence, as a reconstructive difficulty assigned to the distinction between the boards of appeal and those excluded from the filter.

Within this framework, the motivation in support of the proposed amendment, according to the statements of the CJEU: "justifies the exclusion (of some appeal boards)". It is the same judge, who illogically recognizes the choice, which operates with the reform of 2019 and the continuous discussion as a form of satisfaction of a confirmation, which remains the legislative choice of being substantial and senseless.

The legislator of the Union has tried to experiment a new mechanism limiting the boards of appeal and the need to operate a broad selection oriented on the basis of a criterion, which

requires the operation of the CJEU to a dispute. The coherence in the field of application of an instrument, which underlines the regulatory change does not solve the problem of qualification for the boards of appeal, which are independent.

The proposal, that includes the preventive admission mechanism, through additional boards of appeal, which manifest configurations relating to the independence of internal relationships for the decision-making bodies and the respective agencies, is thus aggravated.

The pragmatic approach is appreciated by the judge of the Union, who admits the independence of a superfluous nature for appeals given that the CJEU considers the presence of a control of a semi-jurisdictional body, which defines in an independent manner the actual discipline of the single body and justifies the applicability of the filter.[121]

The eventual possibility of a reasoning for the reform interventions concerns Art. 58 bis of the Statute. The decisions of the Tribunal, through an arbitration clause, do not precede an initial screening of the dispute before a body of the Union, which is independent, jurisdictional and administrative by its nature.

121Tribunal, 18 September 2012, joined cases T-133/08, T-134/08, T-177/08 and T-242/09, Schräder v. CPVO-Hansson (LEMON SYMPHONY), ECLI:EU:T:2012:430, par. 137. CJEU, 21 May 2015, C-546/12 P, Schräder v. CPVO, ECLI:EU:C:2015:332, par. 73. Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, ECLI:EU:T:2020:542 and in CJEU, 9 March 2023, C-46/21 P, ACER v. Aquind, ECLI:EU:C:2023:182.

The CJEU, thus sufficiently justifies the circumstance, that the admission procedure of Art. 58bis of the Statute enters into force with an exact manner within the terms outside the scope of application and reasoning of an original nature, which leads to its introduction.

The filter of the appeals is based with an exclusive manner on the structure of a system, which protects in a jurisdictional manner the limitation of the judgment of the presence of a level of protection close to the private.

The extension of the litigation, the arbitration clauses and the limitation of such a possibility introduce for the appeal a screening of the handling of disputes, which for the CJEU are able to produce legal effects to the order of the Union with a uniform manner. The reasons supporting the applicability of a preventive admission mechanism are confronted with issues of varied scope with this ongoing reform.

Even partial ambiguity affects equal treatment, which finds application in an arbitration clause that goes beyond the dispute, as subject to a level of protection, which respects the appellants of an appeal, who consider the appeal board to the tribunal as inadmissible.

The control of the appeal boards excludes from the boundaries of CJEU the judicature of the Union, which is not qualified as jurisdictional. This presence has an impact on equal treatment,

which ensures individuals the protection of the judge. In the degrees of judgment, which appear limited and existing, the level of protection of the appeal board is not taken into account. This is an administrative and not jurisdictional remedy. Thus the problem of equal treatment for the appellant available before the CJEU and the Tribunal has a limiting effect, through a mechanism that filters the appeals to a level of generality in individuals in the same way.

Even partial ambiguity affects equal treatment, which finds application in an arbitration clause, that goes beyond the dispute, as subject to a level of protection, which respects the appellants of an appeal, who consider the board of appeal to the Tribunal as inadmissible.

The control of the boards of appeal excludes from the boundaries of CJEU the judicature of the Union, which is not qualified as jurisdictional. This presence has an impact on equal treatment, which ensures individuals the protection of the judge. In the degrees of judgment, which appear limited and existing, the level of protection of the board of appeal is not taken into account. This is an administrative and not jurisdictional remedy. Thus, the problem of equal treatment for the appellant available before the CJEU and the Tribunal has a limiting effect, through a mechanism that filters the appeals to a level of generality with individuals in the same way.

This is a correct and formal approach, which adopts a partial view, that can also be shared by the boards of appeal, which do not exercise any role comparable to that of the judge of CJEU, which excludes the contribution to the provision of protection towards the interests of individuals.[122]

The subjects of a treatment between appellants are distanced due to a new Art. 58 bis of the Statute. Equal treatment ensures the circumstance for a double jurisdictional control according to primary law, that is, a right that guarantees the parties a general principle for the order of the Union, such as a procedural process, through litigation, which reaches the judges of the Union for its own control. This extension of the preventive admission mechanism finds in a partial and adequate way a single ratio, consistent with the reform interventions. However, it does not find a basis in a prior examination of litigation, that operates by an independent body.

The reform thus opens the way for the evolution of a mechanism beyond the confines of the application of a filter in areas of litigation and the entirety of appeals through decisions that are adopted by the Tribunal.

The general extension of a reform not useful at levels of offer of the parties, as well as the applications of the filter of appeals ranges from a general filter and as a mechanism for managing

122CJEU, 9 March 2023, C-46/21 P, ACER v. Aquind, ECLI:EU:C:2023:182, par. 57.

the relations between the Tribunal and the CJEU, as a process of an ad hoc extension, i.e. as a procedural instrument in areas of litigation of an identified nature.

Art. 256 TFEU as a type of primacy to the Statute and as a normative source of reference deals with the institution of the appeal, thus excluding the argumentation and the generalized limitation of the right, that requires, with a necessary way, the revision of the treaties. This is not conceivable at the moment. The CJEU uses a mechanism of preventive and effective admission, that affects the portion of the high work related to appeals. It is considered that the filter of the appeal offers a useful tool for managing the relationships between CJEU and Tribunal, with an efficient way at a historical moment.

The activity of the judge of the Union does not resolve the preliminary references and direct actions as high numbers, that are inspired by principles of operation with a partial and different way.

The process of extension of the mechanism likes and allows the effects of a reform to a complex, secondary system, that is able to acceptance. However, the procedural level for both private applicants and bodies of the institutions of the Union remains as a similar legitimate process of extension.

The coherent perspective of an extensive conduct to an application field, as a filter operates in sectors, that denote a

degree of normative autonomy for the principles applicable with an easy way by isolating the boundaries, that develop a jurisprudential practice of an admissibility for the appeals, that regulates the disputes.

It seems that the problem in application practice, by the judge of the Union and the prerequisites, that justify the relative admissibility for the appeal, is the subject of a series of clarifications of the CJEU and of an interpretation, that in fact regulates the disputes after the filter, that comes from the appeal commissions of the agencies.

The rich jurisprudence up to now has excluded the relative issues for the nullity, opposition, cancellation of trademark, patent, plant variety, that are also considered the acts, that arise to an important question for the coherence, integration, cohesion of the Union. Thus, the filter operates in a general way to a dispute and the right to appeal is important for the declination of its own jurisprudence in the subject of admissibility in the sectors, which for the Tribunal are characterized by precise regulations and procedures of important importance.

Even in the field of state aid and competition as well as restrictive measures provide similar and evolutionary evidence for the precise characteristics, that distinguish the disputes in the sectors provided to a certain degree of selection.

This type of procedural instrument, as a mechanism of

preventive admission is established in various sectors of the law of the Union. The reasoning is relevant for the protection of individual interests, as an immediate extension, that adapts to sectors relevant to legal positions for individuals within the rules of publicity.

As regards competition it appears to be different and well regulated. The litigation for restrictive measures, on the other hand, is based on an interest of the physical and legal individual, which includes certain freedoms and rights.

The mix of fundamental factors, namely the normative one that identifies the common ratio in the sectors subjected to filtering and able to justify in a coherent way the limitation of an appeal for the decisions of the tribunal, respects the responsibility of the CJEU as an operational aspect and as a filter in a precise way each matter.[123]

Concluding remarks

The procedural process of the European Union represents a privileged sector, that observes the judicature of the Union. It forces the interpreter to a pragmatic approach, faithful to the actual functioning of a procedural machine.

123CJEU, order of 30 September 2019, C-461/19 P, All Star v. EUIPO, ECLI:EU:C:2019:797. CJEU, order of 10 December 2021, C-382/21 P, The KaiKai Company Jaeger Wichmann GbR, ECLI:EU:C:2021:1050. CJEU, order of 8 May 2023, causa C-776/22 P, Studio Legale Ughi e Nunziante v. EUIPO, op. cit.

The procedural rules constitute a plastic manifestation of the general principles that are inspired by the needs, which respond to fundamental objectives. The procedural instrument as a general principle, within a system of jurisdictional protection, dynamically falls within an analysis of procedural rules, which focus on procedural mechanisms, that regulate the internal activity of the requests, that are presented within the legal system of the Union and in the relationships between them. The appeal of the decisions of the Tribunal before the CJEU highlight roles, which start from the analysis of a discipline of the appeal judgment with limiting characteristics.

The nature of the boards of appeal for agencies delves into appeals, which are presented to the Tribunal, through the decisions of the same boards of appeal and as different typologies that come into contact and overlap.

The preventive admission procedure for appeals operates at the dimension of dual nature and at an examination of an instrument, that unites the judgment in the appeal as rules of flow and as appeal for the decisions of the boards of appeal, which constitute an applicability framework.

The relational mechanisms bring together the different administrative and jurisdictional decision-makers, that regulate the relationships between them, thus offering a chain of jurisdictional protection.

The contentious mechanisms of the Union and of the appeal proceedings and in general the decisions of the law of the Union bring attention to measures and interventions, which lead to effects of an organic perspective within the organization of the judge of the Union, as a functioning of considerations and in respect of a systematic vision, which concerns the evolution of the relationships between CJEU and Tribunal, which involve a jurisdictional protection of similar relationships that generate the legal system of the Union.

Reforms go back and forth over the years and reflect general evolutionary lines, such as the form of an efficient protection system by referring to the agencies' boards of appeal as well as the framework of an institutional framework of the Union (Heffernan, 2003).

The development of a jurisprudential nature is broad and complex in the administrative and jurisdictional sector. The bodies, which follow the evolution to a relationship of intensity and control, operate within the discipline of Art. 47 CFREU, as evidence based on an order of the Union, which affirms the boards of appeal as jurisdictional bodies, which require a qualification, which sets as its objective the vision de iure condendo.

The evolution of the procedural process, as a model of the boards of appeal, is due to the nature of bodies of adjudication

and not of justice, with a hybrid way to a knowledge of reasoning and objectives of administrative authorities for the protection of positions enjoyed by individuals and authorities among themselves.

The boards of appeal include a single discipline for the protection of the individual in the legal categories, which control administrative acts of the Union, within the capacity of application, with an intense way and within the search for error in the technical decision, complex, that evaluates elements, that preclude every body and institution, which protects the institutional landscape of the Union.[124]

It does not seem, that the affirmation of the boards of appeal play a unique function, that is, a compromise to a transformation of boards into real jurisdictional bodies. The experience of the Kirchenberg judges is characterized by a specialization ratione materiae, which regulates the boards of appeal, according to

124Tribunal, 23 September 2003, T-308/01, Henkel v. OHIM-LHS (UK), ECLI:EU:T:2003:241, par. 32; Tribunal, 1st February 2005, T-57/03, SPAG v. OHIM-Dann and Backer (HOOLIGAN), ECLI:EU:T:2005:29, par. 18; Tribunal, 9 November 2005, T-275/03, Focus Magazin Verlag v. OHIM-ECI Telecom (Hi FOCuS), ECLI:EU:T:2005:385, par. 37; Tribunal, 10 July 2006, T-323/03, La Baronia de Turis v. OHIM - Baron Philippe de Rothschild (LA BARONNIE), op. cit., par. 59; Tribunal, 11 July 2006, T-252/04, Caviar Anzali v. OHIM-Novomarket (Asetra), ECLI:EU:T:2006:199, par. 32; Tribunal. 6 November 2007, T-407/05, SAEME v. OHIM-Racke (REVIAN's), ECLI:EU:T:2007:329, par. 51; Tribunal, 7 December 2017, T-61/16, Coca-Cola v. EUIPO-Mitico (Master), ECLI:EU:T:2017:877, par. 115. Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, op. cit., parr. 59-89. Tribunal, 18 September 2012, joined cases T-133/08, T-134/08, T-177/08 and T-242/09, Schräder v. CPVO – Hansson (LEMON SYMPHONY), ECLI:EU:T:2012:430, parr. 136-140; Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit., parr. 51-69; Tribuunal, 11 December 2014, T-102/13, Heli-Flight v. EASA, op. cit., par. 55-99.

procedural standards, that apply administrative disputes and compromise the very functionality of the control and a limiting and current typology of the boards of appeal and control.[125]

In particular, after the REACH regulation the semi-jurisdictional remedy, that was offered by the boards of appeal has covered an essential and possible role for a company, that produces and markets a chemical substance to immediately stop the production of a discipline for the information obligations and the producers, who have satisfied towards the authorities of the Union and the Member States.

These are scenarios where the time factor is relevant and important. The same discourse is also transferred to the appeal panel of SRB, that involves situations to resolve banking institutions, with effective way on the ability of decisions, that are final in a rapid and efficient way.

The reasoning of the boards of appeal is very complex and difficult. The number of appeal boards is increased as a response to the order of the Union and as a regulatory requirement, which is detailed by the institution.

The increase in the boards of appeal and the administrative capacity of the Union has an instrumental nature, therefore it transforms the control of the appeal boards into a mandatory and exclusive passage, that is, into a step by step passage of the

125Tribunal, 18 November 2020, T- 735/18, Aquind v. ACER, ECLI:EU:T:2020:542, par. 58.

agency's acts, as a reference to access to the judge of the Union and as a remedy before the board of appeal.

The existing boards of appeal[126] sufficiently provide for the relationships between remedies, that remain under various uncertainties.

In a general, gradual way the jurisprudential approach for the tribunal has adopted so far and for the boards of appeal such as ECHA and ACER the relative relationships with the tribunal, which is expressed as the owner. It also confines itself with the search for a possible manifested and not a simple error.[127]

This orientation within the reasoning of a basis, that creates a development for the boards of appeal presents bodies, to which the control of the decisions that are adopted for the administrative bodies is entrusted. It is a choice and a necessity, which protects its control to an area of legitimacy and reliance made by other bodies as well as focuses on an application of the law of the Union. It should be taken into account, that the Union is reasoning to a model of the boards of appeal, that correspond to an attempt, which replicates in a generalized and uniform way the approach of the Tribunal and the relative screening of the decisions of these bodies.

126Art. 72, par. 1 of the regulation of EUIPO; Art. 73, par. 1 of the regulation of CPVO; Art. 94, par. 1 of the regulation of ECHA; Art. 29 of the regulation of ACER and Art. 63, par. 1 of the regulation of ERA.

127Tribunal, 20 September 2019, T-125/17, BASF Grenzach v. ECHA, ECLI:EU:T:2019:638; Tribunal, 18 November 2020, T-735/18, Aquind v. ACER, op. cit.

The boards of appeal put and complete the reform in this regard. It is the object of a preventive admission procedure of the appeal that meets and has a finality, that is consistent with the lines of development of the control of the boards of appeal. The extension of the matter as an objective reaches the control from the boards of appeal.

The general filter of an application framework takes into account the appeals and decisions of the Tribunal. This proposal, as a novelty to a jurisdictional system of the Union, indicates mechanisms similar and applicable to the law of the Union, i.e. as the application of a full protection of protection, which allows the CJEU to treat the proportionate causes with greater protection and to build a determining criterion and application of an instrument to the jurisprudence of the CJEU on the subject of admissibility.

The comprehensive reform, as a procedural instrument of the appeal, transforms the admissibility mechanism consistent with the injustice and the treatment of the CJEU. The admissibility of an appeal is inspired by institutional criteria within the legal system of the Union. It is a consequence of the decision of admission, which constitutes a value judgment on the dispute under examination and of the emerging issues.

The filter, through the appeal, returns and is applied according to criteria of procedural rules, which are based on corrective

paths, through the injustice of the Tribunal and by means of one's own error in the matter.

The jurisdictional system, thus, reaches its maximum potential. On the one hand, the Tribunal is responsible for a system relating to litigation in the field of appeal boards as well as a master of the control of legitimacy for the solutions that are adopted against an administration of the Union within a complex, that elaborates general principles and sectors that apply and guarantee the uniformity and autonomy of the law of the Union.

The CJEU tries to fully exercise a function of a constitutional nature, which does not seem to agree with the idea of an objective, which abandons direct litigation. The CJEU is in contact with the individual types of disputes and with the supreme courts through the activity of jus dicere to a specific case, that is able to evolve the system, that precludes the type of jurisdiction without other activity close to an international court. The evolution of the CJEU to exercise functions of Tribunal also casts uncertainty on the jurisdictional nature.

The developments of recent years to resolve disputes, through an autonomous positioning, respect dynamics that have an international nature, as an objective for a justice, that in a specific case and on a powerful basis offers the primary and secondary law of the Union an important support for the justice

of the Union.

Next to it is the tribunal, which strengthens the institutional position, like a valve that connects and plays an important link between two jurisdictional instances. This is a procedural mechanism of a constitutional nature, which judges the admissibility of an appeal, which offers the judges of Kirchenberg a rich evolution of jurisprudence.

Appeals as a filter as well as the instrument of the appeal continues to apply a work, as a superior court, which has at national level every Member State of the Union, which seeks to correct the error of law in the face of injustice and the outcome of a special conduct for the use of the appeal judgment.

Such a jurisdiction is evolving in lines that affirm a matured satisfaction of the judicature of the Union, which is based on the demand for justice of individuals and on an efficient administration. Justice and the general interest for the ordering of a uniform and continuous interpretation is based on the law of the Union.

References

Adamski, D. (2014). The ESMA Doctrine: A Constitutional Revolution and the Economics of Delegation. *European Law Review, 39 (6),* 812-834.

Alberti, J. (2014). L'utilisation d'actes de soft law par les agences de l'Union européenne. *Revue de l'Union européenne, 583,* 161-169.

Alberti, J. (2018). Challenging the Evolution of the EMU: The Justiciability of Soft Law Measures Enacted by the ECB against the Financial Crisis before the European Courts. *Yearbook of European Law, 37*, 626-649.

Alberti, J. (2022). The Position of Boards of Appeal: Between Functional Continuity and Independence. In M. Chamon, A. Volpato, M. Eliantonio (eds.). *Boards of Appeal of EU Agencies. Towards Judicialization of Administrative Review?,* Oxford University Press, Oxford, 245-272.

Alemanno, A., Pech, L. (2017). Thinking Outside the Docket: A Critical Assessment of the Reform of the EU's Courts System. *Common Market Law Review, 54 (1),* 129-17.

Arnull, A. (1995). The Community Judicature and the 1996 IGC. *European Law Review, 20,* 599-611.

Arnull, A. (1999). Judicial Architecture or Judicial Folly? The Challenge Facing the European Union. *European Law Review, 24,* 516-524.

Arnull, A. (2006). *The European Union and its Court of Justice.* Oxford University Press, Oxford, 53-94.

Barents, R. (2010). The Court of Justice after the Treaty of Lisbon. *Common Market Law Review, 47 (3),* 709-728.

Bartosch, A. (2010). Sogelma II. *European Journal of Business Law*, *12,* 442ss.

Bengoetxea Caballero, J. (2007). Quality Standards in Judicial Adjudication: The European Court of Justice. In G. Britz, H. Korriath, K. L. Kunz, C. Momsen, E. Müller, H. Müller-Dietz, H. Radtke (eds.), *Festschrift für Heike Jung,* ed. Nomos, Baden-Baden, 47-62.

Bernard-Glanz, C., Rodrigues, S. (2008). Le Tribunal de la fonction publique de l'Union européenne: premier bilan. *L'actualité juridique fonctions publiques, 340,* 63-69.

Biancarelli, J. (1990). La création du Tribunal de première instance des Communautés européennes: un luxe ou une nécessité ?. *Revue trimestrielle de droit européen, 25,* 1-25.

Blèry, C. (2012). Rapport introductif. La notion de spécialisation. In C. Ginestet (eds.), *La spécialisation des juges,* Presses de l'Universitè de Toulouse Capitole, Toulouse, 13-22.

Broberg, M., Fenger, N. (2021). *Broberg and Fenger on Preliminary References to the European Court of Justice,* Oxford University Press, Oxford, 1-28, 43-88.

Cameron, G. (2006). Establishment of the European Union Civil Service Tribunal. *The Law and Practice of International Courts and Tribunals, 5 (2),* 273-283.

Capik, A.B. (2005). European Union Civil Service Tribunal: A Coherent Part of the Communities Courts System. *European Law Reporter,* 107-109.

Chalmers, D., Davies, G., Monti, G., Heyvaert, V. (2024). *European Union law*. Cambridge University Press, Cambridge.

Chammon, M. (2014). EU Risk Regulation and EU Procedural Law. *European Journal of Risk Regulation, 5 (3),* 324-337.

Chamon, G., De Arriba-Sellier, N. (2022). FBF: On the Justiciability of Soft Lawand Broadening the Discretion of EU Agencies. E*uropean Constitutional Law Review, 18 (2),* 286-314.

Chiti, E. (2021). The Agencification Process and the Evolution of the EU Administrative System. In P. Craig, G. De Bùrca (eds.), *The Evolution of EU Law,* Oxford University Press, Oxford, 123-155.

Clausen, F. (2018). *Les moyens d'ordre public devant la Cour de justice de l'Union européenne.* ed. Larcier-Intersentia, Bruxelles, 640-642.

Conway, G, (2018). The Quality of Decision-Making at the Court of Justice of the European Union. In M. Bencze, G. Yein (eds.), *How to Measure the Quality of Judicial Reasoning,* ed. Springer, Berlin, 225-250.

Coutron, L. (2018). The Changes to the General Court. In E. Guinchard, M.P. Granger (eds.). *The New EU Judiciary. An Analysis if Current Judicial Reforms*, Wolters Kluwer, Alphen aan den Rijn, 143-160.

Da Cruz Vilaça, J.L. (1991). The Court of First Instance of the European Communities: A Significant Step towards the Consolidation of the European Community as a Community Governed by the Rule of Law. *Yearbook of European Law, 20,* 1-56.

Dehousse, F. (2011). The Reform of the EU Courts. The Need of a Management Approach. *Egmont Paper n. 53*, 22ss.

Donnat, F. (2008). *Contentieux communautaire de l'annulation.* LGDJ, Paris.

Dreyfuss, R.C. (2016). The EU's Romance with Specialized Adjudication. *International Review of Intellectual Property and Competition Law, 47 (8),* 887-890.

Expert, H., Poullet, C. (2019). Le pouvoir de réformation du juge de l'Union en matière de propriété intellectuelle. *Journal de droit européen, 55,* 2-10.

Fuentetaja, P., Jesùs, A. (2008). The European Union Civil Service Tribunal. In A. De Walsche, L. Levi (eds.). *Mélanges en hommages à Georges Vandersanden : promenades au sein du droit européen.* ed. Bruylant, Bruxelles, 873-901.

Gentile, G. (2020). Ensuring Effective Judicial Review of EU Soft Law via the Action for Annulment before the EU Courts: A Plea for a Liberal-Constitutional Approach. *European Constitutional Law Review, 16 (3),* 466-492.

Gervasoni, S. (2007). Le Tribunal de la fonction publique de l'Union européenne : deux ans après. *L'observateur de Bruxelles*, 30-33.

Greco, G. (2022). EUIPO Boards of Appeal in the Light of the Principle of Fair Trial. *European Public Law, 28 (1),* 19-34.

Hakenberg, W. (2012). The European Union Civil Service Tribunal: A Three-Tier Structure. In E. Olufemi (eds.), *The Development and Effectiveness of International Administrative Law.* ed., Brill, Leiden, 251-263.

Hakenberg, W. (2017). The Civil Service Tribunal of the European Union: A Model to Follow as a Specialised Court?. In E. Guinchard, M.P. Granger (eds.), *The New EU Judiciary: An Analysis of Current Judicial Reforms,* Wolters Kluwer, Alphen

aan den Rijn, 161-17.

Harris, M. (1999). The Place of Formal and Informal Review, in M. Harris, M. Parrington, *Administrative Justice in the 21st Century,* Oxford University Press, Oxford, 42-54.

Heffernan, L. (2003). The Community Courts Post-Nice: A European Certiorari Revisited. *International and Comparative Law Quarterly, 52 (4),* 907-933.

Jaeger, M. (2016). The General Court's Power to Alter EUIPO Decisions: A Matter ofInstitutional Balance. *Acta Universitatis Szegediensis: acta juridica et politica, 79,* 257-268.

Jaeger, M. (2019). The EU Judiciary in a New Era of Accountability. In G. Slevik, M. J. Clifton, T. Haas, L. Lourenço, K. Schwiesow (eds.), *The Art of Judicial Reasoning. Festschrift in Honour of Carl Baudenbacher.* ed. Springer, Berlin, 91-104.

Koopmans, T. (1991). The Future of the Court of Justice of the European Communities. *Yearbook of European Law, 20,* 15-32.

Kraemer, H. (2009). The European Union Civil Service Tribunal: A New Community Court Examined after Four Years of Operation. *Common Market Law Review, 46 (6),* 1873-1913.

Lacchi, C. (2020). *Preliminary references to the Court of justice of the European Union and effective judicial protection.* ed. Larcier, Bruxelles.

Lasok, K.P.E., Millet, T., Howard, A. (eds.) (2004). *Judicial Control in the EU: Procedures and Principles, Richmond Law and Text.* Oxford University Press, Oxford.

Lauwaars, R.H. (1979). Auxiliary Organs and Agencies in the EEC. *Common Market Law Review, 16 (3),* 365-387.

Lenaerts, K. (1991). Some Reflections on the Separation of Powers in the European Community. *Common Market Law Review, 28 (1),* 11-35.

Lenaerts, K. (1993). Regulating the Regulatory Process: "Delegation of Powers" in the European Community. *European Law Review, 18, 2*3-49.

Lenaerts, K. (2006). The Unity of European Law and the Overload of the ECJ-The System of Preliminary Rulings Revisited. In I. Pernice, J. Kokott, C. Saunders (eds.), *The Future of the European Judicial System in a Comparative Perspective,* ed. Nomos, Baden-Baden, 211-233.

Liakopoulos, D. (2019). Transnationality and application of EU law in national legislation. Analysis, critics and comparison in CJEU jurisprudence. *Revista General de Derecho Constitucional*, *30,* 2ss.

Mahoney, P.J. (2008). The European Union Civil Service Tribunal: A Specialised Tribunal or a Special Tribunal?. In A. De Walsche, L. Levi (eds.), *Mélanges en hommages à Georges Vandersanden : promenades au sein du droit européen,* ed. Bruylant, Bruxelles, 955-970.

Mahoney, P.J. (2011). The Civil Service Tribunal: The Benefits and Drawbacks of a Specialised Judicial Body. *Human Rights Law Journal, 11 (4),* 11-15.

Marjosola, H., Rusbergen, M.P.M., Scholten, M. (2022). How to Exhort and to Persuade with(out Legal) Force: Challenging Soft Law after FBF. *Common Market Law Review, 59 (5),* 1523-1542.

Mehdi, R. (2018). La soft law devant les juges européens: se saisir de l'insaisissable. In P. Deumier, J.M. Sorel (eds.). *Regards croisés sur la soft law en droit interne, européen et international.* LGDJ, Issy-les-Moulineaux, 369-386.

Micara, A.G. (2007). Shaping a New EU Judicial Architecture: Judicial Panels on Intellectual Property. In I. Maher, F. Snyder, G. (eds.). *The Evolution of the European Courts: Institutional Change and Continuity.* ed. Bruylant, Bruxelles, 211-233.

Naômè, C. (2010). *Le renvoi préjudiciel en droit européen-Guide pratique.* ed. Larcier, Bruxelles, 11-14.

Navin-Jones, M. (2015). A Legal Review of EU Boards of Appeal in Particular the European Chemicals Agency Board of

Appeal. *European Public Law, 21 (1),* 143-168.

Öberg, U., Ali, M., Sabouret, P. (2018). On Specialisation of Chambers at the General Court. In M. Derlèn, J. Lindholm (eds.). *The Court of Justice of the European Union: Multidisciplinary Perspectives.* Oxford University Press, Oxford, 211-224.

Schwarze, J. (2009). *Droit administratif européen*. ed. Bruylant, Bruxelles, 315-316.

Schwarze, J. (2012). European Administrative Law in the Light of the Treaty of Lisbon. *European Public Law, 18 (2),* 285-304.

Scott, J. (2011). In Legal Limbo: Post-Legislative Guidance as a Challenge for European Administrative Law. *Common Market Law Review, 48 (2),* 329-355.

Senden, L., Van Der Brink, A. (2012). *Checks and Balance of Soft EU Rule-Making*. Policy Department of European Parliament, Bruxelles.

Simoncini, M., Verissimo, M.(2022). The EASA Board of Appeal in Search of Identity: An Effective Filter between Administration and Courts?, In M. Chamon, A. Volpato, M. Eliantonio (eds.). *Boards of Appeal of EU Agencies. Towards Judicialization of Administrative Review?.* Oxford University Press, Oxford, 103-121.

Turk, A.H. (2013). Oversight of Administrative Rulemaking: Judicial Review. *European Law Journal, 19 (1),* 126-142.

Turner, C., Muňoz, R. (1999). Revising the Judicial Architecture of the European Union. *Yearbook of European Law, 28,* 72-74.

Vandersanden, G. (2015). The Real Test: How to Contribute to a Better Justice. The Experience of the Civil Service Tribunal. In M. Bobek (eds.), *Selecting Europe's Judges,* Oxford University Press, Oxford, 86-94.

Vasilopoulos, C.A. (2022). Review of Non-Binding Legal Acts (EBA Guidelines): Paradoxes in Legal Reasoning- Comments on Case C-911/19 Fédération Bancaire Française-(FBF), Judgment of the Court of Justice of the European Union of 15 July 2021. *European Business Law Review, 34 (3), 3*9-414.

Vesterdorf, B. (2009). The Court of Justice and Unlimited Jurisdiction: What Does It Mean in Practice?. *Global Competition Policy, 9 (2),* 1-7.

Vos, E. (2013). The European Court of Justice in the Face of Scientific Uncertainty and Complexity. In B. De Witte, E. Muir, M. Dawson (eds.). *Judicial Activism at the European Court of Justice.* Edward Elgar Publisher, Cheltenham, 142-166.

Wahl, N., Prete, L. (2017). The Gatekeepers of Article 267 TFEU: on Jurisdiction and Admissibility of References for Preliminary Rulings. *Common Market Law Review, 55 (2)*, 511-

547.